

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF WASHINGTON**

UNITED STATES OF AMERICA, *ex* ) CASE NO. 2:19-CV-00075-SAB  
*rel.*, DIANE FRANCISCO, )  
 ) QUI TAM COMPLAINT AND  
PLAINTIFF, ) DEMAND FOR A JURY TRIAL  
VS. )  
 ) FILED UNDER SEAL  
AMERICAN FINANCIAL ) PURSUANT TO  
NETWORK, INC., JACK SHERMAN, ) 31 U.S.C. §§ 3729 *et seq.*  
and JOHN SHERMAN, )  
 )  
DEFENDANTS. )

1. Relator Diane Francisco (“Relator”) brings this qui tam action in the name of the United States of America, by and through her undersigned attorneys Thomas & Solomon LLP, and alleges as follows:

**INTRODUCTION**

2. This is a civil fraud action by qui tam Relator on behalf of the United States (“the Government”), against American Financial Network, Inc., Jack Sherman, and John Sherman (collectively “AFN” or “Defendants”) to recover treble damages and civil penalties under the False Claims Act (“FCA”), 31 U.S.C. §§ 3729-

1 3733, for damages sustained by the United States Department of Housing and Urban  
2 Development (“HUD”), the Federal Housing Administration (“FHA”), and the  
3 United States Department of Veteran Affairs (“VA”) in connection with AFN’s  
4 origination, underwriting, and quality control of FHA and VA loans (collectively  
5 “government loans”) under the FHA and VA programs (individually and  
6 collectively, the “Government Programs”).

7 3. The FCA provides that a person is liable to the United States  
8 Government for each instance in which the person knowingly presents, or causes to  
9 be presented, a false or fraudulent claim for payment or approval. 31 U.S.C. §  
10 3729(a)(1) (2006); 31 U.S.C. § 3729(a)(1)(A) (2010).

11 4. Under the FCA, liability attaches when a defendant submits or causes  
12 another to submit a claim for payment from Government funds that the defendant  
13 knows is unwarranted and when false records or statements are knowingly made or  
14 used for obtaining approval of a false or fraudulent claim for Government funds.

15 5. Liability also attaches under the FCA when a defendant knowingly  
16 makes, uses, or causes to be made, a false record or statement to conceal, avoid or  
17 decrease an obligation to pay to the Government.

18 6. The FCA permits any person having information regarding a false or  
19 fraudulent claim for payment from Government funds to bring an action for himself  
20 as the Relator and for the Government and allow him to share in any recovery.

21 7. The FHA promotes American homeownership through its Direct  
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1 Endorsement (“DE”) Lender Program or “DE Program.”

2 8. FHA is a part of HUD and is one of the largest mortgage insurers in the  
3 world.

4 9. Pursuant to the National Housing Act of 1934, FHA offers several  
5 mortgage insurance programs that have insured millions of home loans since FHA’s  
6 inception.

7 10. Similarly, the VA promotes home ownership for veterans, active duty  
8 personnel, certain surviving spouses, and reservists through the VA Home Loan  
9 Guaranty Program (“VA Program”).

10 11. Under the VA Home Loan Guaranty Program, the VA provides a  
11 guarantee of up to 50% of the loan, which protects the lender against loss up to the  
12 amount guaranteed.

13 12. Under the Government Programs, if a homeowner defaults on a  
14 government loan and the mortgage holder forecloses on the property, the  
15 Government Programs will pay the mortgage holder the balance of the loan (or in  
16 the case of VA loans, up to 50% of the loan) and assume ownership and possession  
17 of the property.

18 13. By protecting mortgage holders against defaults on mortgages, the  
19 Government Programs encourage lenders to make loans to millions of creditworthy  
20 citizens who might not otherwise be able to secure a home loan under conventional  
21 underwriting criteria.

1        14. Government insurance is also valuable in the secondary markets, as  
2 government loans are expected to have met stringent underwriting requirements and  
3 because they are backed by the full faith and credit of the United States.

4        15. Thus, for each loan underwritten, the government extends its full faith  
5 and credit to insure the loan, and that governmental insurance, and the concomitant  
6 risk to the Treasury for default, was extended on every endorsed loan, whether the  
7 loan defaulted or not.

8        16. In addition, the taxpayer has been required to fund the insurance  
9 premiums for the Government Programs.

10       17. Further, the government incurs significant administrative costs in  
11 running the Government Programs and accepting endorsed loans by AFN.

12       18. In addition, the government paid claims on any loan that defaulted,  
13 including loss mitigation costs associated with the foreclosure or resale of properties,  
14 such as marketing expenses, real estate taxes, and maintenance costs.

15       19. The government insures the government program loans only if the  
16 Direct Endorsement Lender certifies to the government that the loan specifically,  
17 and the Direct Endorsement Lender's loan program in its entirety, meet the  
18 requirements set forth by the government.

19       20. For these loans, the government guarantees that mortgage holders will  
20 be reimbursed by the government (in full for FHA loans, and up to 50% for VA  
21 loans) if the borrower ultimately does not repay the loan.

1        21. The Government Programs encourage lenders to extend loans to  
2 creditworthy low- and moderate-income families, as well as first-time homebuyers.

3        22. As part of insuring mortgage loans, the government has outsourced to  
4 FHA and VA lenders (individually and collectively, "Government Lenders") the  
5 underwriting services for the loan application; the government no longer performs  
6 its own underwriting services for governmentally insured mortgage programs.

7        23. In addition to performing underwriting services as part of the program,  
8 the Government Lenders also profit from any loan approved.

9        24. Further, because the government insured each loan endorsed by the  
10 Government Lenders, the Government Lenders suffer no risk of loss if the loan fails.

11        25. That means that built into the government mortgage program is a strong  
12 incentive for a Government Lender to endorse as many loans as possible, even those  
13 that are not qualified, in order to maximize profits, provided the Government Lender  
14 is not caught approving bad loans.

15        26. Endorsing fewer loans (even unqualified loans) only reduces a lender's  
16 profitability and puts it at a competitive disadvantage in relation to other  
17 Government Lenders who endorse more loans whether qualified or not.

18        27. Therefore, given these incentives, ensuring that Government Lenders  
19 only endorse loans that meet government mortgage requirements is an essential part  
20 of the program.

21        28. Because Government Lenders are permitted to endorse loans for

1 government insurance without prior government review, the government requires  
2 Government Lenders to conduct due diligence on loans before endorsing them for  
3 government insurance, and relies on the Government Lenders' certifications to the  
4 government in regards to their conduct.

5 29. The Government Lender is expected and obligated to act with good  
6 faith, honesty, and fairness in its dealings with the government; to follow the  
7 government's requirements; and to certify annually, as well as on each loan file, that  
8 the lender is in compliance with government requirements.

9 30. These are the basic checks that exist to check a Government Lender's  
10 self-interest to underwrite as many loans as possible, regardless to the qualifications  
11 of the files.

12 31. AFN, a Government Lender approved by the government to originate  
13 and underwrite single-family residential mortgages insured by the government,  
14 knowingly approved loans that violated government rules while falsely certifying  
15 compliance with those rules.

16 32. From at least 2013 to the present (the "Relevant Time Period"), AFN  
17 engaged in a regular practice of reckless origination and underwriting of government  
18 loans and falsely certified to the government that these loans were eligible for  
19 government insurance.

20 33. AFN's conduct allowed it to profit from these loans, even if the  
21 borrowers defaulted on their mortgages.

1        34. As the risk was entirely on the government, when the non-complaint  
2 loans inevitably defaulted, this materialized into substantial losses to the  
3 government.

4        35. AFN failed to live up to its obligations under the Government  
5 Programs.

6        36. AFN's management instituted and encouraged practices that led  
7 underwriters to break HUD and VA rules and to approve ineligible loans.

8        37. Some examples of these policies and practices include: paying  
9 commissions to employees performing underwriting functions; pressuring  
10 employees to approve ineligible loans; allowing managers to make "exceptions" to  
11 government-required conditions on files; allowing mortgage origination employees  
12 to manage and control underwriting; repeatedly running the automated underwriting  
13 system to "work backwards" to find values that would allow a loan to be approved;  
14 excluding and hiding adverse documentation; and failing to maintain an adequate  
15 quality control program.

16        38. More specifically, on individual loan files, AFN's improper policies  
17 and practices included: improper calculating borrowers' income related to overtime  
18 and bonus earnings; using fraudulent rental and housing payment histories to  
19 establish borrower creditworthiness; failing to obtain the proper verifications of  
20 employment; improperly calculating the effective income of employees paid on an  
21 hourly basis based on a forty hour workweek, when in fact the borrowers were not



1 regularly working at least forty hours in a week; failing to deduct unreimbursed  
2 business expenses from the net income calculations of self-employed borrowers;  
3 intentionally omitting student loan debts; failing to obtain written letters of  
4 explanation from borrowers with major indications of derogatory credit; and failing  
5 to obtain donor bank statements to verify gift fund assets.

6 39. AFN established a culture that valued getting a loan endorsed for  
7 government insurance over complying with the government's rules.

8 40. AFN's aim was to get loans insured by the United States and sold for a  
9 profit—even when AFN could not truthfully certify to the government that the loan  
10 qualified for government insurance.

11 41. Therefore, the United States seeks treble damages and penalties under  
12 the False Claims Act for the insurance claims paid by the government for mortgages  
13 wrongfully approved for government insurance by AFN.

#### 14 **JURISDICTION AND VENUE**

15 42. This action arises under the False Claims Act, 31 U.S.C. §§ 3729-3733.

16 43. This Court has subject matter jurisdiction over this action pursuant to  
17 28 U.S.C. §§ 1331 and 1345 and 31 U.S.C. §§ 3730 and 3732.

18 44. This Court has personal jurisdiction over AFN because AFN transacts  
19 business in the Eastern District of Washington.

20 45. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and  
21 (c), 28 U.S.C. § 1395, and 31 U.S.C. § 3732(a), because AFN transacts business



1 within the Eastern District of Washington.

2 46. Upon information and belief, at least one claim for insurance has been  
3 submitted to the Government by AFN related to a property in the Eastern District of  
4 Washington.

5 47. This suit is not based on prior public disclosure of allegations or  
6 transactions in a criminal, civil or administrative hearing, lawsuit or investigation;  
7 in a Government Accountability Office or Auditor General's report, hearing, audit,  
8 investigation; in the news media; or otherwise as the term "publicly disclosed" is  
9 defined in 31 U.S.C. § 3730(e)(4), but upon rather information from Relator.

10 48. In the alternative, to the extent there has been a public disclosure  
11 unknown to Relator, Relator is an original source as defined by the FCA.

12 49. Relator has direct and independent knowledge of AFN's fraudulent  
13 activities.

14 50. Relator has also voluntarily provided this information to the  
15 Government prior to filing this action as required under 31 U.S.C. § 3730(e)(4)(B).

16 51. Relator shall serve on the United States a copy of this Complaint and a  
17 written disclosure statement setting forth and enclosing all material evidence and  
18 information she possesses, pursuant to the requirements of 31 U.S.C. § 3730(b)(2).

**THE PARTIES**

52. Defendant American Finance Network, Inc. is a Direct Endorsement Lender and is authorized to, and in fact does conduct business in the Eastern District of Washington.

53. Defendant AFN is headquartered at 10 Point Drive, Suite 330, Brea, California 92821.

54. Defendant AFN's Lender ID with the HUD FHA program is 18352.

55. Defendant Jack Sherman is the Chief Executive Officer of American Financial Network, Inc.

56. Upon information and belief, Jack Sherman, in concert with others, develops and manages AFN's policies and practices regarding underwriting and origination of government loans.

57. Defendant John Sherman is the President of American Financial Network, Inc.

58. Upon information and belief, Jack Sherman, in concert with others, develops and manages AFN's policies and practices regarding underwriting and origination of government loans.

59. Relator is a resident of the United States.

60. Relator worked for AFN as a processing manager from approximately 2014 to 2015.

61. During her employment, Relator worked extensively on underwriting

1 governmental loans, including under the FHA and VA programs.

2 62. Through her past work experiences, including time as an underwriter,  
3 Relator has extensive knowledge of the rules and regulations applicable to FHA and  
4 VA loans.

### 5 **FACTUAL BACKGROUND**

#### 6 ***Civil Statutes to Combat Mortgage Fraud***

7 63. The False Claims Act provides that a person is liable to the United  
8 States Government for each instance in which the person knowingly presents, or  
9 causes to be presented, a false or fraudulent claim for payment or approval. 31 U.S.C.  
10 § 3729(a)(1) (2006); 31 U.S.C. § 3729(a)(1)(A) (2010).

11 64. The False Claims Act also makes liable any person who “knowingly  
12 makes, uses, or causes to be made or used, a false record or statement material to a  
13 false or fraudulent claim.” 31 U.S.C. § 3729(a)(1)(B) (2010).

14 65. The Act defines “knowingly” to mean that a person “(i) has actual  
15 knowledge of the information; (ii) acts in deliberate ignorance of the truth or falsity  
16 of the information; or (iii) acts in reckless disregard of the truth or falsity of the  
17 information” 31 U.S.C. § 3729(b) (2006); 31 U.S.C. § 3729(b)(1)(A) (2010).

18 66. The False Claims Act provides that no proof of specific intent to  
19 defraud is required. 31 U.S.C. § 3729(b) (2006); 31 U.S.C. § 3729(b)(1)(B) (2010).

20 67. The False Claims Act defines the term “claim” to mean, in relevant part:  
21 “any request or demand, whether under a contract or otherwise, for money or

1 property and whether or not the United States has title to the money or property, that:  
2 (i) is presented to an officer, employee, or agent of the United States; or (ii) is made  
3 to a contractor, grantee, or other recipient, if the money or property is to be spent or  
4 used on the Government's behalf or to advance a Government program or interest,  
5 and if the United States Government (I) provides or has provided any portion of the  
6 money or property requested or demanded; or (II) will reimburse such contractor,  
7 grantee, or other recipient for any portion of the money or property which is  
8 requested or demanded." 31 U.S.C. § 3729(b)(2)(A) (2010).

9 68. The Supreme Court has made clear that a request for payment made  
10 under a federal loan guarantee that was obtained in violation of a statute, regulation,  
11 or program requirement, by the use of a false statement, or by means of other  
12 fraudulent conduct qualifies as a "claim" under the False Claims Act. *See United*  
13 *States v. Neifert-White Co.*, 390 U.S. 228, 232 (1968).

14 69. Any person who violates the False Claims Act is liable to the United  
15 States Government for a civil penalty of not less than \$5,500 and not more than  
16 \$11,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990  
17 (28 U.S.C. 2461 note; Public Law 104-410), plus 3 times the amount of damages  
18 which the Government sustains because of the act of that person. 31 U.S.C. §  
19 3729(a)(G).

20 ***HUD'S FHA Mortgage Insurance Program***

21 70. HUD is a cabinet-level agency of the United States.

1        71. HUD's mission is to create strong, sustainable, inclusive communities  
2 and quality affordable homes for all.

3        72. HUD works to strengthen the housing market to bolster the economy  
4 and protect consumers, meet the need for quality affordable rental homes, utilize  
5 housing as a platform for improving quality of life, and build inclusive and  
6 sustainable communities free from discrimination.

7        73. FHA is a part of HUD and is one of the largest mortgage insurers in the  
8 world.

9        74. Pursuant to the National Housing Act of 1934, FHA offers several  
10 mortgage insurance programs that have insured more than 40 million home loans  
11 since FHA's inception.

12        75. Through some of these mortgage insurance programs, FHA provides  
13 insurance against losses on mortgage loans to single family homebuyers originated  
14 and held by approved lenders, or mortgagees.

15        76. If a homeowner defaults on an FHA-insured mortgage, the holder of  
16 the mortgage may submit a claim to HUD.

17        77. HUD will then pay the mortgage holder the outstanding balance on the  
18 loan and other costs associated with the default and has in fact done so repeatedly  
19 for AFN's loans.

20        78. AFN, or whoever may purchase the loan from AFN, therefore suffers  
21 no loss when a borrower is unable to repay a government loan – only the government

1 suffers the loss.

2       79. This no-loss guarantee encourages lenders to make loans to  
3 creditworthy applicants who would otherwise have difficulty qualifying for  
4 conventionally available financing on favorable terms, including the ability to put  
5 little money down to make the purchase.

6       80. Government mortgage insurance programs therefore help many  
7 creditworthy low- and moderate-income families as well as first-time homebuyers  
8 become homeowners.

9       81. A lender, like AFN, must apply to be a Government Lender and must  
10 be approved by the government to underwrite government-insured mortgage loans  
11 on the government's behalf.

12       82. This is an important responsibility because the government "does not  
13 review applications for mortgage insurance before the mortgage is executed." 24  
14 C.F.R. § 203.5(a).

15       83. Instead, the Government Lender underwrites mortgage loans on the  
16 government's behalf and is to truthfully certify to the government that the borrower  
17 presents an acceptable credit risk for the government.

18       84. Thus, in underwriting the mortgage loan, the lender is to certify that the  
19 borrower and the mortgage loan meet the government's requirements for insurance  
20 and that the "proposed mortgage is eligible for insurance under the applicable  
21 program regulations." *Id.*

1        85. The Government Lender must decide whether or not to approve the  
2 borrower for a government-insured mortgage loan.

3        86. After the Government Lender approves a borrower for a government-  
4 insured mortgage loan, the lender may submit the mortgage loan for government  
5 insurance (referred to as “endorsing” the loan) and as part of the submission process  
6 must also certify that the mortgage loan itself, as well as the lender’s entire mortgage  
7 loan program, is fully compliant with government requirements and thus can be  
8 insured by the government insurance fund in the event that the borrower cannot  
9 repay the loan.

10       87. Thus, the Government Lender must certify that the loan meets all of the  
11 government’s requirements and the government relies on the DE certification to  
12 endorse the loan for government insurance.

13       88. Certain Government Lenders, such as AFN, apply to, and participate  
14 in, the DE Program in which the mortgagees themselves endorse the mortgage for  
15 government insurance and retain all documentation supporting the mortgage. 24  
16 C.F.R. § 203.6.

17       89. The lender retains the documents necessary to approve the loan (the  
18 FHA “case binder”) and remits the documents to the government only upon request.  
19 *See* Mortgagee Letter 2005-36; HUD Handbook 4000.1, II.A.1.a.i; HUD Handbook  
20 4155.2, 8.B.1.d.

21       90. A Government Lender is expected and obligated to act with the utmost  
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1 good faith, honesty, and fairness in its dealings with the government.

2 91. “Under the . . . civil case law the mortgagee, knowing that the federal  
3 insurer is ‘relying on its professional judgment in a business relationship’ has an  
4 affirmative duty ‘to use due care in providing information and advice’ to the federal  
5 mortgage guarantor.” *United States v. Bernstein*, 533 F.2d 775, 797 (2d Cir. 1976)  
6 (citing *First Nat’l Bank Henrietta v. Small Bus. Admin.*, 429 F.2d 280, 287 (5th Cir.  
7 1970); *Mt. Vernon Coop. Bank v. Gleason*, 367 F.2d 289, 293 (1st Cir. 1966)).

8 92. As a result, in addition to the specific regulatory duties addressed  
9 below, the Government Lender owes both a fiduciary duty and a duty of reasonable  
10 care to the government.

11 ***HUD’s Direct Endorsement Program***

12 93. The success of the DE Program depends upon proper underwriting of  
13 loan files.

14 94. The DE Program is voluntary and gives lenders access to borrowers and  
15 revenue streams lenders would be unlikely to access without the support of HUD  
16 programming and FHA insurance.

17 95. Participating lenders have to determine the eligibility of borrowers and  
18 loans for FHA insurance, and ensure the integrity of the data relied upon to make  
19 such determinations.

20 96. Under the DE Program, HUD relies on the expertise and knowledge of  
21 the lenders.

1        97. A lender must apply to be a Direct Endorsement Lender and must be  
2 approved by HUD to underwrite FHA-insured mortgage loans on HUD's behalf.

3        98. The government relies on the truthfulness of the certification the lender  
4 completes on each loan certifying that the loan is eligible for government insurance.

5        99. As HUD has explained, these "certifications are important as HUD will  
6 rely upon them for purposes of endorsing the mortgage loan, thereby eliminating the  
7 necessity for a detailed HUD review of the loan prior to endorsement." Final Rule,  
8 Mutual Insurance Programs Under the National Housing Act; Direct Endorsement  
9 Processing, 48 Fed. Reg. 11928, 11932 (March 22, 1983).

10       100. Thus, the DE Lender, in exchange for the government's loan guarantee,  
11 provides underwriting mortgage services for HUD and determines whether a  
12 borrower presents an acceptable credit risk for HUD.

13       101. After the DE Lender approves a borrower for an FHA-insured  
14 mortgage loan, the lender may submit the mortgage loan to HUD to "endorse" the  
15 mortgage loan for FHA insurance, meaning that the mortgage loan is fully insured  
16 by the FHA insurance fund in the event that the borrower cannot repay the loan.

17       102. A DE Lender is responsible for all aspects of the mortgage application,  
18 the property analysis, and the underwriting of the mortgage.

19       103. That responsibility includes performing due diligence and ensuring  
20 accuracy.

21       104. These duties require, among other things, that the lenders exercise

1 integrity, prudence, candor, and due diligence on behalf of the government when  
2 underwriting loans for government insurance, reviewing the loans for quality  
3 control purposes, reporting defective loans, and submitting claims. *See* HUD  
4 Handbook 4000.1, V.A.2.c.i; HUD Handbook 4155.2, 1.B.8.a; 1.B.8.b; 1.B.8.c.

5 105. AFN, as a Government Lender always remains responsible for the  
6 actions of its employees that participate in government transactions. *See* FHA  
7 Annual Certifications, *infra* ¶¶ 138–41; *see also* HUD Handbook 4000.1, I.A.6.i;  
8 HUD Handbook 4155.2, 9.D.6.b.

9 106. AFN, like any Government Lender, certified to the government that it  
10 was responsible for the actions of its employees. *See* FHA Annual Certifications,  
11 *infra* ¶¶ 138–41.

### 12 ***The FHA's Due Diligence Requirements***

13 107. Proper due diligence is a critical component of the Direct Endorsement  
14 Program.

15 108. It is required by federal regulation and HUD Handbooks.

16 109. The entire scheme of FHA mortgage guaranties presupposes an honest  
17 mortgagee performing the initial credit investigation with due diligence and making  
18 the initial judgment to lend in good faith after due consideration of the facts found.

19 110. It is also required by virtue of the fiduciary duty and duty of reasonable  
20 care that the Direct Endorsement Lenders owe to HUD. *See* 48 Fed. Reg. at 11932  
21 (“The duty of due diligence owed [HUD] by approved mortgagees is based not only

1 on these regulatory requirements, but also on civil case law.”).

2 111. “The entire scheme of government mortgage guaranties presupposes an  
3 honest mortgagee performing the initial credit investigation with due diligence and  
4 making the initial judgment to lend in good faith after due consideration of the facts  
5 found.” *Bernstein*, 533 F.2d at 797.

6 112. In granting this control and responsibility to the Direct Endorsement  
7 Lenders, HUD must rely on and place trust and confidence in the lenders’  
8 knowledge, good faith, integrity, and candor.

9 113. HUD therefore enters into a fiduciary relationship with the Direct  
10 Endorsement Lenders.

11 114. As a result of this fiduciary relationship, the Direct Endorsement  
12 Lenders owe the government a duty to act with good faith, candor, honesty, integrity,  
13 fairness, and fidelity in their dealings with the government.

14 115. A lender’s due diligence should (1) “determine a borrower’s ability and  
15 willingness to repay a mortgage debt, thus limiting the probability of default and  
16 collection difficulties”; and (2) “examine a property offered as security for the loan  
17 to determine if it provides sufficient collateral.” HUD Handbook 4155.1, REV-5, ch.  
18 2-1; *see also* HUD Handbook 4000.1, II.A.5.d.ii; HUD Handbook 4155.2, 2.A.4.b.

19 116. Proper due diligence thus requires an evaluation of, among other things,  
20 a borrower’s credit history, capacity to pay, cash to close, and collateral.

21 117. In all cases, a Direct Endorsement Lender owes HUD the duty, as

1 prescribed by federal regulation, to “exercise the same level of care which it would  
2 exercise in obtaining and verifying information for a loan in which the mortgagee  
3 would be entirely dependent on the property as security to protect its investment.”  
4 24 C.F.R § 203.5(c).

5 118. HUD has established specific rules for due diligence predicated on  
6 sound underwriting principles.

7 119. In particular, HUD requires Direct Endorsement Lenders to be familiar  
8 and to fully comply with governing HUD Handbooks and Mortgagee Letters, which  
9 provide detailed instructions and requirements for Government Lenders and for  
10 which the government expects the Government Lender to fully comply. *See* HUD  
11 Handbook 4000.1, V.A.2.b.i(A)(1)(a); HUD Handbook 4155.2, 2.A.4.b.

12 120. At various times, the government has promulgated several handbooks  
13 detailing the rules and regulations for lenders underwriting government loans.

14 121. Currently, the operative handbook is the HUD Handbook 4000.1-FHA  
15 Single Family Housing Policy (“HUD Handbook 4000.1”) which went into effect  
16 on approximately September 14, 2015.

17 122. Prior to the implementation of HUD Handbook 4000.1, the operative  
18 handbook was the HUD Handbook 4155.1 *Mortgage Credit Analysis for Mortgage*  
19 *Insurance on One-to-Four Family Properties* (“HUD Handbook 4155.1”) which  
20 was issued in approximately May 2009.

21 123. As they say, these requirements set forth “the minimum standard of due

1 diligence in underwriting mortgages” with which Direct Endorsement Lenders must  
2 comply. 24 C.F.R. § 203.5(c).

3 124. HUD considers the Direct Endorsement underwriter to be “the focal  
4 point of the Direct Endorsement program.” HUD Handbook 4000.4, REV-1, CHG-  
5 2, ch. 2-4.C; *see also* HUD Handbook 4000.1, I.B.3.a; HUD Handbook 4155.2,  
6 2.A.3.a.

7 125. When ensuring that a borrower is creditworthy, a Direct Endorsement  
8 Lender must comply with governing requirements, such as those set forth in the  
9 HUD Handbooks. *See* HUD Handbook 4000.1, II.A.5.a; HUD Handbook 4155.2,  
10 I.A.2.a.

11 126. The rules set forth in HUD Handbook 4155.1 exist to ensure that a  
12 Direct Endorsement Lender sufficiently evaluates whether a borrower has the ability  
13 and willingness to repay the mortgage debt.

14 127. HUD has informed Direct Endorsement Lenders that past credit  
15 performance serves as an essential guide in determining a borrower’s attitude toward  
16 credit obligations and in predicting a borrower’s future actions.

17 128. The Direct Endorsement underwriter must assume the following  
18 responsibilities:

- 19 • compliance with HUD instructions, the coordination of all  
20 phases of underwriting, and the quality of decisions made  
under the program;
- 21 • the review of appraisal reports, compliance inspections

1 and credit analyses performed by fee and staff personnel  
2 to ensure reasonable conclusions, sound reports and  
compliance with HUD requirements;

- 3 • the decisions relating to the acceptability of the appraisal,  
4 the inspections, the buyer's capacity to repay the mortgage  
and the overall acceptability of the mortgage loan for HUD  
5 insurance;
- 6 • the monitoring and evaluation of the performance of fee  
and staff personnel used for the Direct Endorsement  
7 program;
- 8 • and awareness of the warning signs that may indicate  
9 irregularities, and an ability to detect fraud, as well as the  
responsibility that underwriting decisions are performed  
with due diligence in a prudent manner.

10 *Id.*

11 129. Additionally, Direct Endorsement lenders are required to comply with  
12 the following HUD guidelines:

- 13 a. Direct endorsement lenders may only engage in business  
practices that conform to generally accepted practices of  
14 prudent mortgage lenders. See FHA Title II Mortgagee  
Approval Handbook 4060.1, Section 2-10(D) (REV-2,  
15 August 14, 2006).
- 16 b. Direct endorsement lenders may not engage in practices  
that demonstrate irresponsibility. *Id.*
- 17 c. Direct endorsement lenders may only pay fees for services  
permitted by HUD program policy. *Id.* at Section 2-22.
- 18 d. Direct endorsement lenders are required to function so as  
19 to protect the FHA from unacceptable risk. *Id.* at Section  
20 7-2.

21 130. The underwriter must "evaluate the mortgagor's credit characteristics, adequacy



1 and stability of income to meet the periodic payments under the mortgage and all  
2 other obligations, and the adequacy of the mortgagor's available assets to close the  
3 transaction, and render an underwriting decision in accordance with applicable  
4 regulations, policies and procedures." 24 C.F.R. § 203.5(d). Mortgagees must also  
5 employ underwriters who can detect warning signs that may indicate irregularities,  
6 as well as detect fraud; in addition, underwriting decisions must be performed with  
7 due diligence in a prudent manner. HUD Handbook 4000.4 REV-1, ¶ 2-4(C)(5); see  
8 also HUD Handbook 4000.1, V.A.2.c.i; HUD Handbook 4155.2, 2.A.4.b.

9 131. The lender must also maintain a compliant compensation system for  
10 its staff, an essential element of which is the prohibition on paying commissions to  
11 underwriters. See HUD Handbook 4000.1, I.A.3.c.iv(B)(3)(b)(ii); HUD Handbook  
12 4060.1 REV-2, 1I2-9(A).

### 13 ***Certifications and Endorsements for FHA Insurance***

14 132. HUD requires Government Lenders to certify their compliance with  
15 the fiduciary, due diligence, quality control, and reporting requirements discussed  
16 herein.

17 133. Direct Endorsement Lenders are required to certify their compliance  
18 with the FHA's programmatic and individual loan rules by certifying their  
19 compliance with government requirements, as well as governmental rules and  
20 regulations during their initial application to the government, on an annual basis,  
21 and on an individual loan-by-loan basis.

1       ***FHA Initial Certifications to HUD***

2       134. First, AFN as a lender applies to participate in the Government Lender  
3 program and to endorse loans for government insurance on the government's behalf,  
4 AFN certified that it would fully comply with all governmental guidelines,  
5 regulations, and requirements:

6       135. I [AFN] certify that, upon the submission of this application, and with  
7 its submission of each loan for insurance or request for insurance benefits, the  
8 applicant has and will comply with the requirements of the Secretary of Housing and  
9 Urban Development, which include, but are not limited to, the National Housing Act  
10 (12 U.S.C. § 1702 et seq.) and HUD's regulations, FHA handbooks, mortgagee  
11 letters, and Title I letters and policies with regard to using and maintaining its FHA  
12 lender approval.

13       136. Unless AFN submits a truthful initial certification to the government,  
14 AFN would not be entitled to obtain or maintain its status as a Government Lender  
15 or to endorse loans for government insurance.

16       ***FHA Annual Certification Requirements.***

17       137. Even once AFN was initially certified, AFN must re-certify, every year,  
18 that it is complying with the government's program requirements, including due  
19 diligence in underwriting, following all governmental underwriting requirements,  
20 and the implementation of a mandatory quality control plan.

21       138. As of 2010, AFN was required to annually certify:

1 I [AFN] certify that I know, or am in the position to know,  
2 whether the operations of [AFN] conform[s] to HUD-FHA  
3 regulations, handbooks, Mortgagee Letters, Title I Letters,  
4 and policies; and that I am authorized to execute this report  
5 on behalf of [AFN]. I certify that [AFN] complied with  
6 and agrees to continue to comply with HUD-FHA  
7 regulations, handbooks, Mortgagee Letters, Title I Letters,  
8 policies, and terms of any agreements entered into with  
9 [HUD]. I certify that to the best of my knowledge, [AFN]  
10 conforms to all HUD-FHA regulations necessary to  
11 maintain its HUD-FHA approval, and that [AFN] is fully  
12 responsible for all actions of its principals, owners,  
13 officers, directors, managers, supervisors, loan processors,  
14 loan underwriters, loan originators, and all other  
15 employees conducting FHA business for [AFN] . . . Each  
16 of my certifications is true and accurate to the best of my  
17 knowledge and belief. I understand that if I knowingly  
18 have made any false, fictitious, or fraudulent statement(s),  
19 representation, or certification on this form, I may be  
20 subject to administrative, civil and/or criminal penalties;  
21 including debarment, fines, and imprisonment under  
applicable federal law.

139. As of approximately August 1, 2016, a corporate officer of AFN was  
required to annually certify:

I certify that I . . . have known, or have been in the position  
to know, whether the operations of [AFN] conformed to  
all HUD regulations and requirements necessary to  
maintain the Mortgagee's FHA approval as codified by 24  
CFR § 202.5, HUD Handbook 4000.1 Sections I and V, as  
amended by the Mortgagee Letter, and any agreements  
entered into between [AFN] and HUD.

140. AFN also certifies that it is responsible for the actions of its employees,  
including managers, supervisors, originators, underwriters and processors:

I acknowledge that [AFN] is responsible for all actions of  
its officers, partners, directors, principals, managers,

1 supervisors, loan processors, loan underwriters, loan  
2 originations, and other employees of [AFN], and for the  
3 actions of any Affiliates participating in the FHA  
4 programs for or on behalf of [AFN].

5 141. Currently, AFN is additionally required to certify:

6 I certify that, to the best of my knowledge and after  
7 conducting a reasonable investigation, [AFN] does now,  
8 and did at all times throughout the Certification Period,  
9 comply with all HUD regulations and requirements  
10 necessary to maintain [AFN's] FHA approval as codified  
11 in 24 CFR § 202.5, HUD Handbook 4000.1 Sections I and  
12 V, as amended by Mortgagee Letter, and any agreements  
13 entered into between [AFN] and HUD, except for those  
14 instances of non-compliance, if any, that [AFN] reported  
15 to HUD and for which [AFN] received explicit clearance  
16 from HUD to continue with the certification process. Each  
17 of my certifications is true and accurate to the best of my  
18 knowledge. I understand that if I have made any false,  
19 fictitious, or fraudulent statement(s), representation(s), or  
20 certification(s) knowingly on this form, I may be subject  
21 to administrative, civil and/or criminal sanctions,  
including damages, penalties, fines, imprisonment, and  
debarment under applicable federal law. I acknowledge  
that [AFN] is now, and was at all times throughout the  
Certification Period, subject to all applicable HUD  
regulations, Handbooks, Guidebooks, Mortgagee Letters,  
Title I Letters, policies and requirements, as well as Fair  
Housing regulations and laws including but not limited to  
24 CFR § 5.105, Title VIII of the Civil Rights Act of 1968  
(the Fair Housing Act) and Title VI of the Civil Rights Act  
of 1964.

18 142. These annual certifications require compliance with the basic eligibility  
19 requirements for Government Lenders, which include compliance with the due  
20 diligence, quality control, and reporting requirements.

1        ***AFN's annual certifications to the FHA on its operations.***

2        143. Absent a truthful annual certification, AFN is not entitled to endorse FHA loans for  
3 government insurance.

4        144. Absent the applicable certifications in the annual certification described  
5 above, AFN cannot endorse loans for government insurance.

6        145. Unless AFN had submitted a truthful annual certification, AFN is not  
7 entitled to receive the government's financial backing of that mortgage, including  
8 the pledge of the government's full faith and credit for backing such mortgages.

9        146. The annual certification is material to the government's payment of any  
10 claim submitted under the Government Lender Programs.

11        147. The government does not generally review lenders' operations; instead,  
12 it relies on lenders such as AFN to comply with the government's operational  
13 requirements and to ensure that the operational requirements are met.

14        148. The certifications are required for AFN to enter and remain in the  
15 Government Programs.

16        149. AFN's certifications are critical to the government's ability to ensure  
17 that only qualified and eligible loans are endorsed for government insurance.

18        150. AFN's certifications are essential for a claim on a loan to be submitted  
19 for government insurance.

20        151. And AFN's certifications are needed to protect the government  
21 insurance fund from undue risk and loss.

1        ***FHA Individual Loan Certifications.***

2        152. AFN must also submit a certification to the government for each loan  
3 for which it endorses for government insurance (“loan-level certifications”).

4        153. This is a certification to HUD that the individual loan complies with  
5 HUD rules and is “eligible for HUD mortgage insurance under the Direct  
6 Endorsement program.” Form HUD 92900-A.

7        154. This loan-level certification can occur in two ways.

8        155. One, AFN may use a government-approved automated underwriting  
9 system to review loan applications.

10       156. An AUS is a software system that connects to a proprietary HUD  
11 algorithm known as Technology Open to Approved Lenders, or “TOTAL.”

12       157. Numerous requirements promulgated by the government explain how  
13 AFN must calculate each data point and what documentation it needs to support each  
14 data point.

15       158. For each loan that was underwritten with an AUS, AFN must certify to  
16 “the integrity of the data supplied by the lender used to determine the quality of the  
17 loan [and] that a Direct Endorsement Underwriter reviewed the appraisal (if  
18 applicable).” See FHA TOTAL Mortgage Scorecard User Guide; HUD Handbook  
19 4000.1 II.A.4.a.iii(A)(1); HUD Handbook 4155.2 2.A.3.d.

20       159. AFN must further certify that “there was no defect in connection with  
21 the approval of this mortgage such that the result reached in TOTAL should not have

1 been relied upon and the mortgage should not have been approved in accordance  
2 with FHA requirements.” See Form HUD 92900-A.

3 160. The automated underwriting system processes information entered by  
4 AFN and rates loans as either “accept/approve” or a “refer/caution.”

5 161. Therefore, a loan receiving a TOTAL “Accept/Approve” decision is  
6 only eligible for FHA’s insurance endorsement if “the data entered into the AUS [is]  
7 true, complete, properly documented, and accurate.” See FHA TOTAL Mortgage  
8 Scorecard User Guide.

9 162. It is AFN’s responsibility to ensure the integrity of the data relied upon  
10 by TOTAL. See Mortgagee Letter 2004-1. In cases where AFN used a government-  
11 approved automated underwriting system, and the system rates a loan as an “accept”  
12 or “approve,” AFN made the following certification:

13 This mortgage was rated as an “accept” or “approve” by  
14 FHA’s Total Mortgage Scorecard. As such, the  
15 undersigned representative of the mortgagee certifies to  
16 the integrity of the data supplied by the lender used to  
17 determine the quality of the loan, that Direct Endorsement  
18 Underwriter reviewed the appraisal (if applicable) and  
19 further certifies that this mortgage is eligible for HUD  
20 mortgage insurance under the Direct Endorsement  
21 program. I hereby make all certifications required by this  
mortgage as set forth in HUD Handbook 4000.4.

163. However, in cases where AFN uses a government-approved automated  
underwriting system, and the system rates a loan as “refer” or “caution,” or when  
AFN does not use a government-approved automated underwriting system, AFN



1 must make the following certification, in sum and substance:

2           This mortgage was rated as a “refer” or “caution” by  
3           FHA’s Total Mortgage Scorecard, and/or was manually  
4           underwritten by a Direct Endorsement underwriter. As  
5           such, the undersigned Direct Endorsement Underwriter  
6           certifies that I have personally reviewed the appraisal  
7           report (if applicable), credit application, and all associated  
8           documents and have used due diligence in underwriting  
9           this mortgage. I find that this mortgage is eligible for HUD  
10          mortgage insurance under the Direct Endorsement  
11          program and I hereby make all certifications required for  
12          this mortgage as set forth in HUD Handbook 4000.4.

13          164. The certifications in HUD Handbook 4000.4, incorporated by reference  
14          in the certifications above, include AFN’s certification that the mortgage complies  
15          with the government’s underwriting requirements contained in all outstanding  
16          Handbooks and Mortgagee Letters.

17          165. Specifically, AFN certified that:

18           i. The proposed mortgage meets the income and credit  
19           requirements of the governing law in the lender’s  
20           judgment.

21           ii. AFN used due diligence in underwriting the  
            mortgage.

            iii. That the statements made in its application for  
            insurance are true and correct.

            iv. AFN’s statements made in the Lender’s Certificate  
            as part of the Direct Endorsement Approval for a  
            HUD/FHA Insured Mortgage are true and correct.

            v. AFN’s underwriter makes all certifications required  
            by Direct Endorsement Handbook, which include:

1                   1. The mortgagor's monthly mortgage payments  
2                   will not be in excess of his or her reasonable  
3                   ability to pay. 24 C.F.R. § 203.21.

4                   2. The mortgagor's income is and will be adequate  
5                   to meet the periodic payments required to  
6                   amortize the mortgage submitted for insurance.  
7                   24 C.F.R. § 203.33.

8                   3. The mortgagor's general credit standing is  
9                   satisfactory. 24 C.F.R. § 203.34.

10                   ***The VA's Home Loan Guaranty Program***

11                   166. Pursuant to the Servicemen's Readjustment Act of 1944, the VA offers  
12 mortgage assistance through the VA Program.

13                   167. Like FHA loans, VA-guaranteed loans are made by private lenders,  
14 such as banks and mortgage companies.

15                   168. To obtain a VA loan, a veteran must apply to a Government Lender.

16                   169. If the loan is approved, the VA will guarantee a portion of the loan,  
17 which protects the VA Lender against loss up to the amount guaranteed. The  
18 maximum amount that the VA guarantees is 50% of the loan.

19                   170. By partially guaranteeing loans against default, the VA loan guarantee  
20 encourages lenders to make loans to veterans, and makes the resulting loans valuable  
21 on the secondary market.

                  171. Many VA Lenders, including AFN, are authorized to underwrite  
mortgage loans, decide whether the borrower represents an acceptable credit risk for  
the VA, and approve loans for the VA guarantee without prior review or approval

1 by the VA.

2 172. To qualify for the VA guarantee, a mortgage must meet all of the  
3 applicable VA underwriting requirements.

4 173. Much like the HUD underwriting requirements, the VA underwriting  
5 requirements relate to such things as the borrower's income and assets, the  
6 borrower's credit history, and the valuation of the subject property.

7 174. In underwriting loans and evaluating whether to approve loans for the  
8 VA guarantee, VA Lenders are required to follow the VA's applicable underwriting  
9 guidelines. See VA Lenders' Handbook, VA Pamphlet 26-7 at Ch. 4, see also 38  
10 C.F.R. § 36.4340.

11 175. The VA's underwriting guidelines contain rules that must be followed  
12 to ensure that each borrower's "present and anticipated income and expenses, and  
13 credit history[,] are satisfactory" such that the borrower "is a satisfactory credit risk."  
14 38 C.F.R. § 36.4340.

15 176. Further, for a loan to be entitled to coverage under the VA program, the  
16 VA requires that all loans be underwritten by an underwriter with a SAR number,  
17 signifying that she is a VA-approved underwriter in the VA program.

18 177. Under the VA regulations, a SAR underwriter must have at least three  
19 years in process, pre-underwriting, or underwriting mortgage loans, and at least one  
20 year of the most recent three years must have included underwriting decisions  
21 involving VA loans. VA Pamphlet 26-7, Ch. 1, §4.a.

1 178. Additionally, the SAR underwriter must have an Accredited  
2 Residential Underwriter designation from the Mortgage Bankers Association and  
3 must be familiar with the VA's credit underwriting standards. *Id.*

4 ***VA Loan Certifications***

5 179. The VA relies on Government Lenders to conduct due diligence on  
6 loans before approving them for the VA guarantee. See *id.* § 36.4340(j).

7 180. To satisfy this due diligence requirement, VA Lenders must, among  
8 other things, develop all credit information; obtain all required verifications and a  
9 credit report; ensure the accuracy of all information on which the loan decision is  
10 based; and comply with all of the applicable VA underwriting guidelines. *Id.*; see  
11 VA Pamphlet 26-7 at 4-3; VA Form 26-1820.

12 181. To initially participate in the VA Program, each VA lender is required  
13 to certify compliance with the VA regulations for underwriting VA loans by  
14 submitting VA Form 26-8736.

15 182. VA Form 26-8736 is an application for a lender to underwrite VA loans  
16 on an automatic non-supervised basis.

17 183. As part of the express certifications made in this form, each VA lender  
18 agreed and certified that it would, amongst other things, comply with Title 38 of the  
19 United States Code, VA regulations and other directives issued by the VA; notify  
20 the VA of any change in its corporate structure, operations, or financial condition  
21 which would have a bearing on its qualifications to automatically underwrite loans;

1 not close loans on an automatic basis as a courtesy or accommodation for other  
2 mortgage lenders regardless of whether or not such lenders are approved themselves  
3 to close on an automatic basis, nor will it close loans on the automatic basis for any  
4 builder, real estate brokerage firm or other entity which it owns, is owned by, is  
5 affiliated with or has a financial interest in, without the express approval of the  
6 Department of Veterans Affairs; not process loans that it does not itself intend to  
7 make; know that all prospective VA loans to be closed on an automatic basis will be  
8 reviewed and either approved or rejected by an approved underwriter; and take  
9 responsibility for all credit information; i.e., credit report, verifications of  
10 employment and deposit, and disclose the sources of such information.

11 184. VA Form 26-8736 must be signed by the president or principal officer  
12 for each VA lender.

13 185. Additionally, for each loan that a VA Lender approves for the VA  
14 guarantee or refinancing, the lender must certify that it conducted due diligence to  
15 ensure that the mortgage complies with the applicable VA underwriting rules. See  
16 38 C.F.R. § 36.4340(k).

17 186. Pursuant to VA regulations, each loan approved for the VA guarantee  
18 or refinancing incorporates the following certification:

19 The undersigned lender certifies that the (loan)  
20 (assumption) application, all verifications of employment,  
21 deposit, and other income and credit verification  
documents have been processed in compliance with 38  
CFR part 36; that all credit reports obtained or generated

1 in connection with the processing of this borrower's (loan)  
2 (assumption) application have been provided to VA; that,  
3 to the best of the undersigned lender's knowledge and  
4 belief the (loan) (assumption) meets the underwriting  
5 standards recited in chapter 37 of title 38 United States  
Code and 38 CFR part 36; and that all information  
provided in support of this (loan) (assumption) is true,  
complete and accurate to the best of the undersigned  
lender's knowledge and belief.

6 *Id.* at § 36.4340(k)(2)(i).

7 187. Additionally, for each loan that a VA Lender approves for the VA  
8 guarantee or refinancing, the lender must execute VA Form 26-1820, pursuant to  
9 which it further certifies, among other things, that "[t]he loan conforms with the  
10 applicable provisions of Title 38, U.S. Code, and the Regulations concerning  
11 guaranty or insurance of loans to veterans."

12 ***AFN's certifications to the Government Programs on individual loans***

13 188. Absent a truthful loan application certification, AFN is not entitled to  
14 endorse a particular loan for government insurance.

15 189. Absent the applicable certifications for an individual loan as described  
16 above, AFN cannot endorse that loan for government insurance.

17 190. Unless AFN had submitted a truthful loan-level certification, AFN is  
18 not entitled to receive the government's financial backing of that mortgage,  
19 including the pledge of the government's full faith and credit for backing such  
20 mortgages.

21 191. Each of the foregoing certifications is material to the government's

1 payment of any claim submitted under the Government Lender Programs.

2 192. The government does not review government loans for approval prior  
3 to the loan being endorsed for insurance; instead, it relies on lenders such as AFN to  
4 comply with the government's requirements and to ensure that every loan is in fact  
5 eligible for government insurance.

6 193. The certifications are required for AFN to enter and remain in the  
7 Government Programs.

8 194. AFN's certifications are critical to the government's ability to ensure  
9 that only qualified and eligible loans are endorsed for government insurance.

10 195. AFN's certifications are essential for a claim on a loan to be submitted  
11 for government insurance.

12 196. And AFN's certifications are needed to protect the government  
13 insurance fund from undue risk and loss.

14 ***Defaulted loans result in losses to the government***

15 197. Once a loan is endorsed by AFN, it is insured by the government on the  
16 basis that that the Government Lender has followed the government requirements  
17 and has submitted accurate certifications and that the loan is eligible for government  
18 insurance.

19 198. Additionally, AFN's annual certifications ensure that AFN has met all  
20 of the government's requirements on both a programmatic and individual loan basis.

21 199. Without those requirements being met, any loan submitted by AFN is



1 not eligible for government insurance.

2 200. It is only because a Government Lender endorses a loan for government  
3 insurance that the holder of the mortgage is able to submit a claim to the government  
4 for any losses.

5 201. If the borrower defaults, the holder of the mortgage can submit a claim  
6 to the government for any loss from the default.

7 202. The holder submits a claim for insurance by using HUD's electronic  
8 claim system.

9 203. The claim must include certain information which is set forth on HUD  
10 form 27011 and electronic versions of the same.

11 204. Each loan that is endorsed for FHA insurance has a unique FHA case  
12 number, and the claim must include the FHA case number.

13 205. If a valid FHA case number is not submitted with the claim, an  
14 insurance payment will not be processed on that claim.

15 206. The claim also must include the identification number of the mortgagee  
16 inputting the claim, which must be either the holder of record or the servicer of  
17 record of the mortgage.

18 207. FHA pays these insurance claims in two parts.

19 208. First, the mortgage holder makes an initial claim for the unpaid  
20 principal on the loan, plus interest.

21 209. Second, if applicable, the mortgage holder later makes a final claim for

1 expenses and allowances (e.g., foreclosure costs), plus interest. HUD Handbook  
2 4330.4, REV-I, ch. 2-4.

3 210. These claims are submitted to HUD electronically, and HUD's  
4 electronic system processes them automatically.

5 211. The system ensures that the FHA insurance is active with respect to the  
6 FHA case number provided and that there are no other impediments (such as a no-  
7 pay flag or indemnification agreement) to paying the claim.

8 212. After processing, the claim is approved for payment, and a  
9 disbursement request is sent to the United States Treasury to issue the funds via wire  
10 transfer to the holder of the mortgage note.

11 213. The damages sustained by the United States as a result claims on the  
12 government resulting from AFN's conduct takes several forms.

13 214. First, the United States sustains losses in the form of "net losses"  
14 whereby the amount of proceeds received by the government from reselling the  
15 foreclosed properties, or from bundling the loans for sale to an investor, is deducted  
16 from the loan or claim amount.

17 215. Additionally, any costs associated with foreclosure, resale, or sale of  
18 the note, such as marketing expenses, real estate taxes, and maintenance costs, are  
19 added to the claim amount.

20 216. In other words, the loss to the government on the loans is adjusted for  
21 any proceeds received by the government from the sale of the foreclosed property,

1 and for any costs associated with the disposition of the property.

2 217. Thus, for each loan underwritten, the government extended its full faith  
3 and credit to insure the loan, and that governmental insurance, and the concomitant  
4 risk to the Treasury for default, was extended on every endorsed loan, whether the  
5 loan defaulted or not.

6 218. In addition, the taxpayer has been required to fund the insurance  
7 premiums for the FHA program.

8 219. Further, the government incurs significant administrative costs in  
9 running the FHA program and accepting endorsed loans by AFN.

10 220. In addition, the government paid claims on any loan that defaulted.

11 ***AFN's national scheme to defraud the Government Programs***  
12 ***through deliberately and recklessly approving ineligible loans for***  
***government insurance.***

13 221. As described below, AFN knew, deliberately ignored, and recklessly  
14 disregarded the fact that many of its loans did not comply with the government's  
15 underwriting requirements, and thus were not eligible for government mortgage  
16 insurance.

17 222. From at least 2013 to the present, AFN engaged in a regular practice of  
18 reckless origination and underwriting of government loans and falsely certified to  
19 the government that these loans were eligible for government insurance.

20 223. AFN focused on maximizing these profit-making schemes across all  
21 locations in the company.

1        224. In addition, AFN established national underwriting policies and  
2 practices.

3        225. The policies described in this complaint reflect AFN's nationwide loan  
4 and underwriting policies which are used interchangeably at all its locations.

5        226. For example, Relator is aware that AFN's national underwriting  
6 policies and interpretations were established by individuals such as Jude Brennan,  
7 who was AFN's Northeast Regional Operations Manager.

8        227. Despite the fact that Mr. Brennan worked in the Philadelphia,  
9 Pennsylvania area, Mr. Brennan discussed AFN's underwriting policies and  
10 procedures with Relator and Relator's Manager, Duane Dougan, who were located  
11 in the San Diego area.

12        228. Additionally, Relator is aware that emails discussing AFN's  
13 underwriting policies and practices were communicated to its underwriting staff  
14 throughout the United States.

15        229. From at least 2013 to the present, AFN has engaged in a regular policy  
16 and practice of reckless origination and underwriting of its government loans and  
17 falsely certified to the government that those loans were eligible for government  
18 insurance.

19        230. Furthermore, AFN knew of certain underwriting processes that  
20 deliberately ignored and recklessly disregarded government requirements that would  
21 result in AFN endorsing materially deficient loans for government mortgage

1 insurance.

2 231. Additionally, AFN pushed for increased loan volume that came at the  
3 expense of loan quality.

4 232. But AFN's management failed to take effective action to address the  
5 seriously deficient loan originations and underwriting that it knew was occurring.

6 233. The underlying causes of AFN's very serious loan quality problems and  
7 reckless underwriting are multifold, several of which are detailed in this Complaint.

8 234. In this case, AFN instituted a series of policies that replaced its  
9 fiduciary obligation with one that maximized its profits and sales.

10 235. AFN's interest was underwriting as many government loans as  
11 possible, secure in the knowledge that if it was not caught, the government would  
12 pay for any defaulted loans.

13 236. The proximate and natural result of AFN's process was to endorse loans  
14 that defaulted at a significantly higher rate than comparable mortgagees, which was  
15 borne out by its statistics.

16 237. AFN's policies caused it to endorse loans that defaulted at a higher rate  
17 than comparable mortgagees.

18 238. AFN's government insured loans were so problematic that over the past  
19 two years, FHA loans from AFN have resulted in claims, or have seriously  
20 delinquent payments (payments over 90 days due which often signal a likely  
21 complete default on the loan) that have exceeded the national average for other

1 government loan lenders at a significantly higher rate.

2 239. HUD's Neighborhood Watch database provides data information for  
3 tracking the performance of loans originated, underwritten, and serviced by FHA-  
4 approved lending institutions.

5 240. The system is designed to provide information about the performance  
6 of loans that are originated, underwritten and serviced by FHA-approved lending  
7 institutions by highlighting instances of high defaults and claims among lending  
8 institutions by geographic area, loan characteristic, and other factors.

9 241. According to the HUD Neighborhood Watch for the two-year data of  
10 the performance period between January 1, 2014 and December 31, 2015 the rate of  
11 loans that are seriously delinquent or have resulted in claims against HUD was  
12 1.44%, while the national average for all mortgagees was only 1.12%.

13 242. Further, upon information and belief, the United States has paid at least  
14 170 claims between 2013 and 2016 for loans submitted for FHA insurance by AFN.

15 ***AFN's wrongful conduct violated specific HUD rules and***  
16 ***requirements governing the origination and underwriting of FHA***  
***insured mortgages.***

17 243. AFN's knowingly improper origination and underwriting of FHA  
18 mortgage loans violated numerous specific rules and requirements published by  
19 HUD.

20 244. Specifically, AFN violated requirements contained or referenced in one  
21 or more of the following documents, which set forth the minimum standards for

1 originating and underwriting FHA insured mortgages and with which HUD  
2 regulations required AFN to comply, see 24 C.F.R. §§ 203.5(c), (d), (e);  
3 203.255(b)(5):

4 a. HUD Handbook 4155.1 Revision 5 (“REV-5”),  
5 Mortgage Credit Analysis for Mortgage Insurance, dated  
6 October 2003 and Mortgagee Letters amending and  
7 clarifying the same;

8 b. HUD Handbook 4155.1, Mortgage Credit Analysis for  
9 Mortgage Insurance, issued May 2009 and Mortgagee  
10 Letters amending and clarifying the same; and

11 c. FHA Total Mortgage Scorecard User Guide dated  
12 December 2004;

13 d. HUD Handbook 4000.1-FHA Single Family Housing  
14 Policy

15 e. HUD Handbook 4000.4 REV-1, Change 2, Single  
16 Family Direct Endorsement Program, issued July 1994  
17 and Mortgagee Letters amending and clarifying the same;

18 f. HUD Handbook 4060.1 REV-2, FHA Title II Mortgage  
19 Approval Handbook, issued August 2006 and Mortgagee  
20 Letters amending and clarifying the same;

21 g. HUD Handbook 4000.2 REV-3, FHA Mortgagees’  
Handbook Application Through Insurance, issued May  
2004 and Mortgagee Letters amending and clarifying the  
same;

h. HUD Handbook 4155.2, Lender’s Guide to Single  
Family Mortgage Insurance Processing, issued May 2009  
and Mortgagee Letters amending and clarifying the same  
(including, but not limited to, Mortgagee Letter 2009-28);

i. HUD Handbook 4165.1 REV-2, Endorsement for  
Insurance for Home Mortgage Programs (Single Family),

1 issued April 2005 and Mortgagee Letters amending and  
2 clarifying the same;

3 j. HUD Handbook 4150.1 REV-1, Valuation Analysis for  
4 Home Mortgage Insurance, issued February 1990 and  
5 Mortgagee Letters amending and clarifying the same  
(including, but not limited to, Mortgagee Letters 1994- 54  
6 and 1996-26); and

7 k. HUD Handbook 4150.2 Change 1, Valuation Analysis  
8 for Single Family One- to Four-Unit Dwellings, issued  
9 July 1999 and Mortgagee Letters amending and clarifying  
10 the same.

11 245. Compliance with these Handbooks, Mortgagees Letters, and other  
12 documents (such as the TOTAL User Guides), is expressly incorporated into the  
13 Code of Federal Regulations and these documents have the force of law. See 24  
14 C.F.R. § 203.5(c).

15 246. AFN's violations of these authorities as to specific loans rendered  
16 AFN's certifications on the loans' HUD Forms 92900-A false. HUD Form 92900-  
17 A, HUD/VA Addendum to Uniform Residential Loan Application, dated June 2005  
18 and revisions of the same; see, e.g. 24 C.F.R. § 203.255(b)(5).

19 247. These falsities were material to and rendered false the ultimate  
20 submission of mortgage insurance claims on the loans, including because the claims  
21 were made on mortgage insurance that was fraudulently induced and because such  
claims contained misleading half-truths. Specifically:

a. That is, by certifying a loan's compliance with the  
above authorities at the time of endorsement (when the  
loan did not so comply), AFN falsely and fraudulently



1 induced HUD to insure the loan (rendering any insurance  
2 claim on that loan false).

3 b. Further, a claim presented by AFN on HUD Form  
4 27011 or its electronic counterpart for a loan that AFN  
5 falsely endorsed for FHA mortgage insurance gave an  
6 FHA case number and the date of the loan's endorsement  
7 for FHA insurance while failing to disclose that the loan  
8 did not qualify to be endorsed for FHA insurance pursuant  
9 to the above authorities and that FHA could contest the  
10 contract for insurance and not pay the claim, pursuant to  
11 12 U.S.C. § 1709(e), because of AFN's fraud or  
12 misrepresentation in originating the loan.

13 c. Lastly, a claim presented by a subsequent holder of a  
14 loan on HUD Form 27011 or its electronic counterpart that  
15 AFN falsely endorsed for FHA mortgage insurance gave  
16 an FHA case number and the date of the loan's  
17 endorsement for FHA insurance while failing to disclose  
18 that the loan did not qualify to be endorsed for FHA  
19 insurance pursuant to the above authorities because AFN  
20 failed to disclose that the loan did not qualify for FHA  
21 insurance.

***AFN falsely represented to the Government that it was not paying  
commissions to employees performing underwriting services.***

248. Government regulations do not allow a Mortgagee to compensate an  
employee who performs underwriting functions with commissions. *See* HUD  
Handbook 4000.1, 1.A.3.c.iv.(B)(3)(b)(ii); HUD Mortgagee Approval Handbook  
4060.1, 2-9(A).

249. Therefore, AFN, as a mortgagee, "must not compensate employees who  
perform underwriting...activities on a commission basis." *Id.*

250. This helps to ensure that employees performing underwriting functions

1 are making decisions completely on the merits of the individual file and not  
2 incentivized to approve mortgages because of the potential to be paid a commission.

3 251. Government regulations also prohibit an employee from having  
4 multiple sources of compensation, either directly or indirectly, from a single FHA-  
5 insured transaction. *See* HUD Handbook 4000.1, 1.A.3.c.iv.(B)(3)(b)(v).

6 252. Further, AFN agreed to follow such regulations.

7 253. AFN, however, as part of its scheme to profit off of government  
8 subsidized mortgage insurance, knowingly compensated its employees who  
9 performed underwriting activities on governmental files on a commission basis in  
10 order to get as many files approved as possible, even when those files did not meet  
11 the government's requirements.

12 254. AFN only paid the commission if the employee approved the file and it  
13 was funded for government insurance.

14 255. This amounted to a "kick-back" from AFN to its employees when a  
15 loan was approved and created a conflict of interest because the employee's  
16 compensation was dependent on both supposedly meeting government  
17 requirements, as well as trying to get the loan endorsed even it did not meet those  
18 requirements.

19 256. AFN's improper commissions system existed throughout the entire  
20 duration of Relator's employment with AFN.

21 257. Given that AFN knew, or should have known, that its commission  
QUI TAM COMPLAINT - 46

1 payment plan did motivate the endorsement of non-qualified applicants, regardless  
2 of the regulations' requirements, AFN's conduct was improper for a government  
3 lender.

4 258. Further, AFN's representations to the government that it was not  
5 engaging in such conduct are false.

6 ***AFN falsely represented to the government that it was not pressuring***  
7 ***employees to endorse bad loans.***

8 259. Proper due diligence is a critical component of the Direct Endorsement  
9 Program. *See* HUD Handbook 4000.1, II.A.5.d.ii; HUD Handbook 4155.2 2.A.4.b.

10 260. It is required by federal regulation and government handbooks.

11 261. AFN, however, as part of its scheme to profit off of government  
12 subsidized mortgage insurance, knowingly pressured employees to endorse loans  
13 that should be endorsed with due diligence and then repeatedly certified to the  
14 government that it was not doing so.

15 262. Put simply, AFN is required to "exercise the same level of care which  
16 it would exercise in obtaining and verifying information for a loan in which the  
17 mortgagee would be entirely dependent on the property as security to protect its  
18 investment." 24 C.F.R § 203.5(c).

19 263. Contrary to these requirements, AFN improperly pressured employees  
20 through a series of policies and practices.

21 264. These policies and practices included: establishing quotas; threatening

1 employees that they would lose their jobs if certain loan volumes were not met;  
2 creating turnaround times that did not allow for proper underwriting; and switching  
3 files to other employees if the initial individual could not get the loan approved.

4 265. AFN knew these policies and practices did not allow for the proper  
5 underwriting of all governmental loan applications, but instead pressured for the  
6 approval of unqualified files to meet those requirements.

7 266. Relator witnessed AFN improperly pressure employees to approve  
8 loans starting at the beginning of her employment with AFN and continuing  
9 throughout the duration of her employment and occurring on approximately a daily  
10 basis.

11 267. Consistent with AFN's goals, AFN's pressure was meant to, and did in  
12 fact, encourage employees performing underwriting functions to endorse loan  
13 applications in which the applicant's qualifications did not conform to the  
14 government's requirements yet still receive government insurance.

15 268. Given that AFN knew, or should have known, that its pressure did  
16 motivate the endorsement of non-qualified applicants, regardless of the regulations'  
17 requirements, AFN's conduct was improper for a Direct Endorsement lender.

18 269. Further, AFN's representations to the government that it was not  
19 engaging in such conduct are false.

1 *AFN falsely represented to the government that it did not have a*  
2 *management “override policy” under which management overrode*  
3 *government requirements and encouraged employees to do so as well.*

4 270. Government regulations only allow for the endorsement of loans that  
5 meet all of the government lending requirements. *See* HUD Handbook 4000.1,  
6 I.B.3.a. and II.A; HUD Handbook 4060.1, 1-10.

7 271. As set forth above, for each FHA loan AFN endorsed, AFN also  
8 certified that, as to the loan, there was “no defect in connection with my approval of  
9 this mortgage,” and also certified that, as to that loan, it was not the case that “the  
10 mortgage should not have been approved in accordance with FHA requirements.”  
11 *See* Form HUD 92900-A.

12 272. Additionally, for each VA loan that AFN endorsed, AFN certified that  
13 “all verifications of employment, deposit, and other income and credit verification  
14 documents have been processed in compliance with 38 CFR part 36” and that the  
15 loan “meets the underwriting standards recited in chapter 37 of title 38 United States  
16 Code and 38 CFR part 36.”

17 273. Despite being required to comply with all government requirements,  
18 AFN instead created a management override process under which management  
19 would dictate that loans being endorsed even if they did not meet the government’s  
20 requirements.

21 274. AFN’s management was aware of the management override process,  
both by creating it and then making the overrides from governmental underwriting

1 policies with it.

2 275. Relator witnessed AFN's management override governmental  
3 requirements starting at the beginning of her employment with AFN and continuing  
4 throughout the duration of her employment and occurring on nearly a daily basis.

5 276. The conditions that AFN overrode were material and the government  
6 would not have insured the loans for governmental insurance had it known that the  
7 conditions that AFN was overriding were not met.

8 277. By having management override the governmental requirements, AFN  
9 knew that it was not in compliance with the governmental regulations but falsely  
10 told the government that it was meeting those requirements.

11 278. Because of the management overrides, AFN succeeded in its goal of  
12 underwriting more guaranteed loans even though those loans did not qualify for  
13 insurance coverage.

14 ***AFN falsely represented to the government that employees***  
15 ***performing underwriting functions were not being managed by***  
***mortgage origination activities.***

16 279. Government regulations require that underwriters are not managed by  
17 any individual who performs mortgage origination activities. *See* HUD Handbook  
18 4000.1, I.A.3.c.iv(B)(3)(b)(vi)

19 280. Similarly, Government regulations prohibit mortgage origination  
20 employees from giving anything of value to employees performing underwriting  
21 functions. *See* HUD Handbook 4000.1, I.A.6.h; HUD Handbook 4060.1, 2-22.

1        281. This help ensures that the independent judgment of an underwriter is  
2 not influenced by origination goals.

3        282. Contrary to these rules and regulations, AFN allowed its sales  
4 employees to override underwriting employees.

5        283. These practices included AFN allowing its loan officers and branch  
6 managers to remove or waive conditions; allowing loan officer and branch managers  
7 to change conditions in the AUS system without notifying underwriting employees;  
8 and allowing loan officers and branch managers to threaten, pressure, and intimidate  
9 underwriting employees.

10       284. Relator witnessed AFN engage in this conduct starting at the beginning  
11 of her employment with AFN and continuing throughout her employment, and  
12 occurring on nearly a daily basis.

13       285. Consistent with AFN's goals, AFN's subordination of underwriting  
14 management to the sales staff was meant to, and did in fact, result in the endorsement  
15 of loan applications in which the applicant's qualifications did not conform to the  
16 government's requirements yet still received government insurance.

17       286. Given that AFN knew, or should have known, that having the sales  
18 force manage underwriting decisions would result in the endorsement of non-  
19 qualified applicants, regardless of the regulations' requirements, AFN's conduct was  
20 improper for a Direct Endorsement lender.

1 *AFN falsely represented to the government that it was not*  
2 *manipulating variables in the AUS/Total system in order to endorse*  
3 *FHA loans for unqualified buyers.*

4 287. As described above, the government has a credit-rating algorithm  
5 maintained by the FHA known as TOTAL Mortgage Scorecard—that works in  
6 conjunction with AFN’s automated underwriting system (“AUS”)—to obtain  
7 “accept/approve” ratings for its FHA loans.

8 288. TOTAL rates loans as either “accept/approve” or “refer” based on data  
9 points that AFN enters into its AUS, including, for example, the dollar value of the  
10 borrowers’ income and assets.

11 289. Loans that receive an “accept/approve” rating are subject to less  
12 stringent documentation requirements and underwriter scrutiny than loans that  
13 receive a “refer” rating.

14 290. Direct Endorsement Lenders are not permitted to manipulate the  
15 information they enter into an AUS/TOTAL to determine what specific variable  
16 amounts would result in an “accept/approve” rating.

17 291. Because TOTAL cannot analyze data that is not available to it, certain  
18 loans are not eligible for AUS approval and must be manually underwritten.

19 292. “A manual downgrade becomes necessary if additional information,  
20 not considered in the AUS decision, affects the overall insurability or eligibility of a  
21 mortgage otherwise rated as an accept or approve.” FHA TOTAL Mortgage  
22 Scorecard User Guide (December, 2004 Edition), ch. 2.



1        293. While a lender is not required to have a DE underwriter review the  
2 credit portion of an AUS approved loan, a lender must have qualified staff review  
3 AUS approvals to ensure a loan that receives an “Accept/Approve” decision is in  
4 fact eligible for an AUS approval.

5        294. To ensure the integrity of TOTAL’s decision, as well as the integrity of  
6 the data TOTAL relies upon, lenders are prohibited from “manipulating . . .  
7 application variables [in] TOTAL mortgage scorecard to obtain an accept/approve  
8 classification.” *See* Mortgagee Letter 2005-15; HUD Handbook 4000.1,  
9 II.A.4.a.iii(A)(1) and II.A.4.a.iv; HUD Handbook 4155.1, 6.A.c.

10       295. If TOTAL does not approve a loan with an “Accept/Approve” decision,  
11 it returns a “Refer” decision, meaning the loan is referred back to the lender for  
12 manual underwriting.

13       296. Lenders must then have a DE underwriter perform a manual underwrite  
14 and determine if the loan is approvable under the FHA’s manual underwriting  
15 requirements. *See* 24 C.F.R. § 203.255(b)(5)(i)(B).

16       297. For example, if a Direct Endorsement Lender receives a “refer” rating  
17 after entering all relevant data points into an AUS/TOTAL, the lender may not then  
18 enter hypothetical income or asset amounts (i.e., income or asset amounts that lack  
19 a factual basis) in an effort to determine what level of income or assets would  
20 generate an “accept/approve” rating.

21       298. Rather, as made clear by the 4000.1 Handbook, “If a determination is  
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1 made that the Mortgage must be downgraded to manual underwriting, the Mortgagee  
2 must cease its use of the AUS and comply with all requirements for manual  
3 underwriting when underwriting a downgraded Mortgage.” *See* HUD Handbook  
4 4000.1, II.A.4.a.vi. *See also* HUD Handbook 4155.1, 6.A.1.c.

5 299. The prohibition on entering unsubstantiated data points into an  
6 AUS/TOTAL exists, among other reasons, to protect against fraud.

7 300. TOTAL is not to be used by sales people to manipulate fake variables  
8 in attempt to figure out how to get an “approve” score from the system.

9 301. For instance, if a Direct Endorsement Lender entered factually  
10 unsupported income or asset amounts into an AUS—and thereby determined the  
11 precise amount of income or assets necessary to obtain an “accept/approve” rating  
12 from TOTAL the lender could falsify loan documents to state that the borrower  
13 possesses the required amount of income or assets.

14 302. That is why the regulations require that a Mortgagee’s employees cease  
15 using the system as soon as the result is a “refer.” *See* HUD Handbook 4000.1,  
16 II.A.4.a.iv(c); HUD Handbook 4155.1, 6.A.1.c.

17 303. As part of its scheme to approve government loans that it was presented,  
18 AFN systematically manipulated the data that was entered into AFN’s AUS/TOTAL  
19 system to determine variables that would lead to an “accept/approve” rating from  
20 TOTAL.

21 304. Thus, in order to get around a “refer” rating from AUS, AFN would  
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1 manipulate AUS by isolating one or more variables (e.g., the borrower's income)  
2 and slightly yet systematically increase or decrease the variable(s) during successive  
3 AUS/TOTAL runs over a short period of time to identify the variable amount(s) that  
4 would result in an "accept/approve" rating, even though the financial situation of the  
5 borrower had not changed between the runs.

6 305. After identifying the qualifying variable amount(s), AFN's employees  
7 would then communicate that information to the borrower, thus inviting the  
8 borrower to create and submit fraudulent documents reflecting the qualifying  
9 variable amount(s).

10 306. There is simply no legitimate, fiduciary basis to re-run AUS multiple  
11 times on the same loan file unless the lender is attempting to manipulate the system  
12 even though the financial situation of the borrower had not changed between these  
13 runs.

14 307. Relator witnessed AFN manipulate the AUS findings to obtain  
15 accept/approval of files starting at the beginning of her employment with AFN, and  
16 continuing throughout the duration of her employment.

17 308. Relator is aware that in one instance, AFN ran the AUS approximately  
18 100 times before obtaining an accept/approve status for the loan.

19 309. AFN ran the AUS multiple times in order to deliberately obtain  
20 "approve" status from the AUS, as opposed to "refers" that would have required  
21 much more stringent underwriting.

1 ***AFN falsely certified to the government that it was not hiding adverse***  
2 ***documentation that should be included in FHA files.***

3 310. AFN falsely certified to the government that it was not hiding  
4 documents that needed to be included in the loan files, even though AFN knew that  
5 it was hiding such documents.

6 311. Additionally, FHA regulations require that underwriting decisions be  
7 based on all the required documents in the applicants file.

8 312. Derogatory, as well as supportive, documents are to be considered in  
9 the process and all red flags must be evaluated.

10 313. Further, a mortgagee is required to maintain all such documents in the  
11 loan file, both to properly determine the borrower's eligibility, as well as to be  
12 available for future review for internal quality assurance purposes, and government  
13 audits.

14 314. These documents should have remained part of the loan file and not be  
15 deleted.

16 315. Despite these requirements, AFN frequently placed adverse  
17 documentation in a "trash file" to avoid including certain documents in the  
18 underwriting of a loan.

19 316. These derogatory records should have been part of the decision to have  
20 a file approved, and by not including them, AFN approved government loans that  
21 otherwise would not have been approved and also made it appear that the files were

1 legitimate.

2 317. Instead, by making the files invisible, AFN made it seem as though  
3 these documents never existed and the loan file actually qualified for government  
4 insurance.

5 318. Relator witnessed AFN omitting and hiding adverse documents starting  
6 at the beginning of her employment and continuing throughout the duration of her  
7 employment with AFN.

8 319. Even though AFN knew it was doing so, it falsely certified to the  
9 government that it was not.

10 ***AFN's False Certifications Regarding Individual Loans***

11 320. AFN falsely certified that statements made in the application for  
12 insurance were true and accurate and that all conditions had been satisfied.

13 321. A number of its mortgages did not qualify for government insurance  
14 because they were not underwritten in accordance with HUD or VA guidelines, AFN  
15 had not used due diligence in underwriting them, AFN entered data into its AUS that  
16 lacked integrity, and AFN failed to satisfy AUS conditions before closing and  
17 endorsing the mortgages for government insurance.

18 322. As a result of the foregoing conduct, AFN submitted numerous false  
19 claims to HUD and the VA for insurance on defaulted loans that were ineligible for  
20 such insurance.

21 323. The following examples are non-exhaustive and only small set of  
QUI TAM COMPLAINT - 57

1 examples of the loans which AFN improperly approved and submitted for FHA  
2 insurance.

3 324. AFN intentionally improperly calculated borrowers' income related to  
4 overtime and bonus earnings, allowing AFN to inflate borrowers' incomes.

5 325. As another example, AFN knowingly used fraudulent rental and  
6 housing payment histories to falsify borrowers' creditworthiness.

7 326. AFN also did not properly verify borrowers' income and employment  
8 status, allowing AFN to improperly inflate borrowers' incomes.

9 327. AFN also knowingly miscalculated the effective income of employees  
10 whose were paid hourly but whom had inconsistent hours.

11 328. As yet another example, AFN knowingly failed to deduct unreimbursed  
12 business expenses from the net income calculations of self-employed borrowers to  
13 inflate borrower incomes in order to obtain approvals of lonas.

14 329. AFN also failed to written letters of explanation from borrowers with  
15 major indications of derogatory credit.

16 330. As another example, AFN failed to obtain donor bank statements to  
17 verify gift fund assets.

18 331. Each of the above examples is a violation of the Government  
19 underwriting rules and regulations.

20 332. Despite these regulations, AFN underwrote mortgages for properties,  
21 approved and endorsed loans for Government insurance, and certified that that the

1 underwriter had personally reviewed the associated documentation, used due  
2 diligence to underwrite the mortgage, and that the loans complied with all  
3 Government requirements, and was eligible for insurance.

4 333. Contrary to AFN's certifications, AFN did not use due diligence to  
5 underwrite these loans and the AFN did not comply with the Government's  
6 requirements in underwriting and approving the loans for Government insurance.

7 334. Relator witnessed AFN fraudulently submit loans for Government  
8 insurance despite the defects listed above throughout her employment with AFN,  
9 beginning immediately after she was hired by AFN and continuing throughout her  
10 employment.

11 ***AFN failed to maintain an adequate quality control program.***

12 335. A Direct Endorsement Lender is required to maintain a quality control  
13 program to ensure the quality of its government-insured mortgages. HUD requires  
14 that "[t]he Quality Control function must be independent of the [lender's] origination  
15 and servicing functions." HUD Handbook 4060.1, REV-2, ch. 7-3.B; *see also* HUD  
16 Handbook 4700.2, REV-1, ch. 6-1.A.

17 336. The quality control program must be designed to meet the goals of  
18 assuring compliance with FHA's requirements, protecting FHA from unacceptable  
19 risk, guarding against errors, omissions and fraud, and assuring swift and appropriate  
20 corrective action. HUD Handbook 4060.1, REV-2, ch. 7-2. The quality control  
21 program also must review a sample of all closed loan files to ensure they were

1 underwritten in accordance with HUD guidelines. HUD Handbook 4060.1, REV-2,  
2 ch. 7-6.C; see also HUD Handbook 4700.2, REV-1, ch. 6-1.D.

3 337. When a lender reviews a loan file for quality control, the lender must,  
4 among other things, review and confirm specific pieces of information.

5 338. For instance, “[d]ocuments contained in the loan file should be checked  
6 for sufficiency and subjected to written reverification. Examples of items that must  
7 be reverified include, but are not limited to, the mortgagor[‘]s employment or other  
8 income, deposits, gift letters, alternate credit sources, and other sources of funds.”  
9 HUD Handbook 4060.1, REV-2, ch. 7-6.E.2.; *see also* HUD Handbook 4700.2  
10 REV-1, ch. 6-3.A.2.

11 339. If the lender finds discrepancies, it must explore them to ensure that  
12 there are no deficiencies. “Any discrepancies must be explored to ensure that the  
13 original documents . . . were completed before being signed, were as represented,  
14 were not handled by interested third parties and that all corrections were proper and  
15 initialed.” HUD Handbook 4060.1, REV-2, ch. 7-6.E.2.

16 340. At the end of the quality control review, the lender is expected to assess  
17 the significance of any deficiencies. The HUD Handbook recommends a “system  
18 of evaluating each Quality Control sample on the basis of the severity of the  
19 violations found during the review. The system should enable a mortgagee to  
20 compare one month[‘]s sample to previous samples so the mortgagee may conduct  
21 trend analysis.” HUD Handbook 4060.1, REV-2, ch. 7-4.



1        341. HUD recommends four types of ratings. The ratings provided for this  
2 purpose are:

- 3            • “Low Risk”, i.e., no problems or minor problems were  
4 identified with loan servicing or origination;
- 5            • “Acceptable Risk,” i.e., the issues identified were not  
6 material to the “creditworthiness, collateral security or  
7 insurability of the loan”;
- 8            • “Moderate Risk,” i.e., a failure to address significant  
9 unresolved questions or missing documentation has  
10 created moderate risk for the mortgagee and the FHA; and
- 11            • “Material Risk,” i.e. the issues identified were “material  
12 violations of FHA or mortgagee requirements and  
13 represent an unacceptable level of risk.”

14        342. Examples of “material risk” are violations that include a “significant  
15 miscalculation of the insurable mortgage amount or the applicant[’]s capacity to  
16 repay, failure to underwrite an assumption or protect abandoned property from  
17 damage, or fraud.” HUD Handbook 4060.1, REV-2, ch. 7-4.D.

18        343. These findings trigger mandatory reporting obligations. Mortgagees  
19 “must report [Material Risk] loans, in writing,” to HUD. *Id.*

20        344. A lender is also required to report to HUD “[f]indings of fraud or other  
21 serious violations” that are discovered “during the normal course of business and by  
quality control staff during review/audits of FHA loans.” HUD Handbook 4060.1,  
REV-2., ch. 7-3.J. *See also* HUD Handbook 4000.1, V.A.2.d.iv; HUD Handbook  
4155.2, 1.B.8.a, I.B.8.b and I.B.8.c.

1        345. The lender must report these findings, along with the supporting  
2 documentation, within 60 days of when the lender first discovers them. *Id.*; HUD  
3 Handbook 4060.1, REV-2, ch. 2-23 (“Mortgagees are required to report to HUD any  
4 fraud, illegal acts, irregularities or unethical practices.”).

5        346. Since November 2005, Direct Endorsement Lenders such as AFN have  
6 been required to make such reports through HUD’s online Neighborhood Watch  
7 Early Warning System. *See* Mortgagee Letter 2005-26.

8        347. Internal reporting of findings is also required.

9        348. Quality control review findings must “be reported to the mortgagee[‘]s  
10 senior management within one month of completion of the initial report” HUD  
11 Handbook 4060.1, REV-2, ch. 7-3.I.

12        349. In addition to appropriate reporting, lenders must act to address the  
13 problems they identify.

14        350. “Management must take prompt action to deal appropriately with any  
15 material findings. The final report or an addendum must identify actions being taken,  
16 the timetable for their completion, and any planned follow-up activities.” *Id.*; *see*  
17 *also* HUD Handbook 4700.2, REV-1, ch. 6-1.F.

18        351. Despite these programmatic requirements, AFN failed to provide  
19 underwriting staff with training and feedback on underwriting errors.

20        352. AFN also failed to self-report instances of fraud and misconduct by  
21 employees as required under the Government regulations.

1 353. Consistent with AFN's goals, AFN's lack of a sufficient quality control  
2 process was designed to, and did result in, the endorsement of loan applications that  
3 did not meet governmental requirements.

4 354. Given that AFN knew, or should have known, that a lack of a quality  
5 control process and training did result in the endorsement of non-qualified  
6 applicants, regardless of the regulations' requirements, AFN's conduct was  
7 improper for a Government lender.

8 ***AFN knowingly made false statements to the government in regards***  
9 ***to the quality of AFN's underwriting process and the quality of***  
10 ***AFN's endorsed loans.***

11 355. AFN did not want the government to know that it was underwriting  
12 files illegally, or that AFN was breaking its contractual agreements.

13 356. AFN therefore made false statements to the government to induce the  
14 government to extend insurance coverage on home loans, as well as pay for losses  
15 on covered loans.

16 357. AFN made these false certifications repeatedly in regards to its  
17 underwriting process.

18 358. Each false certification independently triggers AFN's liability.

19 359. In addition, the purpose, as well as the actual outcome, of AFN's  
20 improper practices of paying commissions to employees performing underwriting  
21 functions; pressuring employees to approve ineligible loans; allowing managers to  
make "exceptions" to government-required conditions on files; allowing mortgage

1 origination employees to manage and control underwriting; repeatedly running the  
2 automated underwriting system to “work backwards” to find values that would allow  
3 a loan to be approved; excluding and hiding adverse documentation; and failing to  
4 maintain an adequate quality control program was to push AFN’s employees to  
5 endorse loans in which the applicant fell below government’s requirements for  
6 insuring the loans as described in ¶¶ 132–87.

7 360. AFN’s illegal policies and practices therefore induced these knowing,  
8 false statements set forth in ¶¶ 132–87 AFN is independently liable for such false  
9 statements knowingly induced by its commission pay plan.

10 *Annual certifications*

11 361. As set forth above, AFN submitted an annual certification to HUD in  
12 every year that it was a member of the Direct Endorsement Lender program.

13 362. For fiscal years 2013-2016 AFN annually certified to the federal  
14 government that the operations of AFN had been, and was, in conformance with all  
15 applicable HUD-FHA regulations and handbooks.

16 363. From the years 2016 to the present AFN annually certified to the federal  
17 government that the operations of AFN had been, and were, in conformance with  
18 HUD Handbook 4000.1 Sections I and V, and any agreements between AFN and  
19 HUD.

20 364. However, AFN was not in compliance with these HUD-FHA  
21 requirements in a number of ways.

1        365. For example, AFN made false, specific representations about the  
2 quality of the services they were providing.

3        366. AFN annually certified they were providing HUD-FHA compliant  
4 underwriting services when they knew they did not, and had no intention of  
5 providing such services.

6        367. Among other things AFN knew this statement was false because AFN  
7 was paying commissions to employees performing underwriting functions;  
8 pressuring employees to approve ineligible loans; allowing managers to make  
9 “exceptions” to government-required conditions on files; allowing mortgage  
10 origination employees to manage and control underwriting; repeatedly running the  
11 automated underwriting system to “work backwards” to find values that would allow  
12 a loan to be approved; excluding and hiding adverse documentation; and failing to  
13 maintain an adequate quality control program, even though AFN contracted not to  
14 engage in such conduct and the government regulations forbade AFN from engaging  
15 in such practices.

16        368. Additionally, AFN knew this statement was false because AFN had  
17 been, and intended to continue, its policies and practices of: paying commissions to  
18 employees performing underwriting functions; pressuring employees to approve  
19 ineligible loans; allowing managers to make “exceptions” to government-required  
20 conditions on files; allowing mortgage origination employees to manage and control  
21 underwriting; repeatedly running the automated underwriting system to “work

1 backwards” to find values that would allow a loan to be approved; excluding and  
2 hiding adverse documentation; and failing to maintain an adequate quality control  
3 program, even though AFN contracted not to engage in such conduct and HUD-FHA  
4 regulations forbade AFN from engaging in such practices.

5 369. AFN was also not in compliance with all HUD-FHA requirements  
6 because they knowingly endorsed loans that fell below the HUD-FHA requirements.

7 370. This included improper calculations of borrowers’ income related to  
8 overtime and bonus earnings to inflate borrowers’ incomes; using fraudulent rental  
9 and housing payment histories to establish borrower creditworthiness; failing to  
10 obtain the proper verifications of employment; improperly calculating the effective  
11 income of employees paid on an hourly basis based on a forty hour workweek, when  
12 in fact the borrowers were not regularly working at least forty hours in a week;  
13 failing to deduct unreimbursed business expenses from the net income calculations  
14 of self-employed borrowers; intentionally omitting student loan debts; failing to  
15 obtain written letters of explanation from borrowers with major indications of  
16 derogatory credit; and failing to obtain donor bank statements to verify gift fund  
17 assets.

18 371. Thus, when AFN stated in its annual certification that its operations  
19 conformed to HUD-FHA requirements, AFN knew this statement was false because  
20 AFN had (and intended to continue) to endorse such deficient files.

21 372. These representations on the annual certifications were designed by  
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1 AFN to, and in fact cause, the government to extend government funded insurance  
2 coverage and pay insurance claims on non-conforming home loans.

3 373. In submitting these annual certifications, AFN did not disclose its non-  
4 compliance with these important regulatory and contractual requirements which  
5 made AFN's certifications false statements.

6 ***Loan-level certifications***

7 374. As set forth above, for each FHA loan AFN endorsed, AFN also  
8 certified that, as to the loan, there was "no defect in connection with my approval of  
9 this mortgage," and also certified that, as to that loan, it was not the case that "the  
10 mortgage should not have been approved in accordance with FHA requirements."

11 *See* Form HUD 92900-A.

12 375. Additionally, for each VA loan that AFN endorsed, AFN certified that  
13 "all verifications of employment, deposit, and other income and credit verification  
14 documents have been processed in compliance with 38 CFR part 36" and that the  
15 loan "meets the underwriting standards recited in chapter 37 of title 38 United States  
16 Code and 38 CFR part 36."

17 376. Although AFN, through its employees and agents, certified that the  
18 process to approve the loan had "no defect," had that the loan itself had been  
19 approved "in accordance with FHA requirements," AFN knew such certification on  
20 those loans was not accurate.

21 377. AFN submitted these false loan-level certifications on virtually every

1 business day from at least 2013 to the present.

2 378. Among other things, as discussed above, AFN knew this statement was  
3 false because AFN had a defective underwriting process in place for the approval of  
4 the mortgage and that the loan itself did not meet the governmental requirements.

5 379. Specifically, AFN knew that, among other things, AFN was paying  
6 commissions to employees performing underwriting functions; pressuring  
7 employees to approve ineligible loans; allowing managers to make “exceptions” to  
8 government-required conditions on files; allowing mortgage origination employees  
9 to manage and control underwriting; repeatedly running the automated underwriting  
10 system to “work backwards” to find values that would allow a loan to be approved;  
11 excluding and hiding adverse documentation; and failing to maintain an adequate  
12 quality control program, and doing so even though AFN contracted not to engage in  
13 such conduct and the government regulations forbade AFN from engaging in such  
14 practices.

15 380. In addition, as a result of AFN’s scheme to push though unqualified  
16 loans, AFN endorsed loan files that did not qualify under the government’s  
17 underwriting requirements.

18 381. This included improper calculations of borrowers’ income related to  
19 overtime and bonus earnings to inflate borrowers’ incomes; using fraudulent rental  
20 and housing payment histories to establish borrower creditworthiness; failing to  
21 obtain the proper verifications of employment; improperly calculating the effective



1 income of employees paid on an hourly basis based on a forty hour workweek, when  
2 in fact the borrowers were not regularly working at least forty hours in a week;  
3 failing to deduct unreimbursed business expenses from the net income calculations  
4 of self-employed borrowers; intentionally omitting student loan debts; failing to  
5 obtain written letters of explanation from borrowers with major indications of  
6 derogatory credit; and failing to obtain donor bank statements to verify gift fund  
7 assets.

8 382. Therefore, AFN's statement on the loan-level certification, that the loan  
9 met all government requirements, was false.

10 383. Among other things AFN knew this statement was false because AFN  
11 knowingly made improper calculations of borrowers' income related to overtime  
12 and bonus earnings to inflate borrowers' incomes; used fraudulent rental and  
13 housing payment histories to establish borrower creditworthiness; failed to obtain  
14 the proper verifications of employment; improperly calculated the effective income  
15 of employees paid on an hourly basis based on a forty hour workweek, when in fact  
16 the borrowers were not regularly working at least forty hours in a week; failed to  
17 deduct unreimbursed business expenses from the net income calculations of self-  
18 employed borrowers; intentionally omitted student loan debts; failed to obtain  
19 written letters of explanation from borrowers with major indications of derogatory  
20 credit; and failed to obtain donor bank statements to verify gift fund assets.

21 384. Despite AFN's representations that they were endorsing compliant  
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1 FHA and VA loans, AFN knew they were in fact delivering non-conforming loans  
2 to the government.

3 ***Materiality***

4 385. The false statements by AFN were material in inducing the government  
5 to extend insurance coverage to loans endorsed by AFN and to pay claims on  
6 government loans that had been endorsed by AFN.

7 ***Annual certifications***

8 386. As set forth above, the purpose of the regulations, and the purpose of  
9 AFN's annual certification that they were following the regulations, was to ensure  
10 that AFN's underwriting operations met acceptable underwriting standards for FHA-  
11 insured loans.

12 387. A reasonable person would not have extended loan insurance on a loan  
13 file, and certainly not provided it at the lower rates offered in the governmental  
14 program, if she knew that AFN was not following the required underwriting process,  
15 including paying commissions to employees performing underwriting functions;  
16 pressuring employees to approve ineligible loans; allowing managers to make  
17 "exceptions" to government-required conditions on files; allowing mortgage  
18 origination employees to manage and control underwriting; repeatedly running the  
19 automated underwriting system to "work backwards" to find values that would allow  
20 a loan to be approved; excluding and hiding adverse documentation; and failing to  
21 maintain an adequate quality control program, particularly when AFN was falsely

1 certifying that they were in compliance with the regulations banning such practices.

2 388. A reasonable person would not have allowed AFN to participate in the  
3 DE Program if she knew that AFN was not following the required underwriting  
4 process to participate in the Direct Endorsement Program, including important  
5 contractual and regulatory requirements such as paying commissions to employees  
6 performing underwriting functions; pressuring employees to approve ineligible  
7 loans; allowing managers to make “exceptions” to government-required conditions  
8 on files; allowing mortgage origination employees to manage and control  
9 underwriting; repeatedly running the automated underwriting system to “work  
10 backwards” to find values that would allow a loan to be approved; excluding and  
11 hiding adverse documentation; and failing to maintain an adequate quality control  
12 program, particularly when AFN was falsely certifying that they were in compliance  
13 with the regulations.

14 389. AFN knew that the government attached importance to these annual  
15 certifications that AFN was in compliance with the regulations.

16 390. Among other things, the government required these annual  
17 certifications before extending insurance coverage to AFN’s endorsed loans, and  
18 before allowing AFN to participate in the Direct Endorsement Program.

19 391. Further, the regulations define such violations as “material.”

20 392. The entire purpose of compliance with the relevant government  
21 regulations was the essence of the bargain between the government and AFN: AFN

1 would only provide underwriting services following the regulations, and only  
2 endorse loans that met the regulations' requirements, and the government would  
3 only extend insurance to AFN's loans based on AFN's accurate representation that  
4 they had followed the regulatory and contractual requirements in endorsing the  
5 loans, including not paying commissions to employees performing underwriting  
6 functions; not pressuring employees to approve ineligible loans; not allowing  
7 managers to make "exceptions" to government-required conditions on files; not  
8 allowing mortgage origination employees to manage and control underwriting; not  
9 repeatedly running the automated underwriting system to "work backwards" to find  
10 values that would allow a loan to be approved; not excluding and hiding adverse  
11 documentation; and maintaining an adequate quality control program.

12 393. Therefore the government was expressly clear that a condition of  
13 extending insurance coverage to AFN's endorsed loans, and the government's  
14 ultimate payment on any losses was that AFN annually certify its compliance with  
15 the regulations, including not paying commissions to employees performing  
16 underwriting functions; not pressuring employees to approve ineligible loans; not  
17 allowing managers to make "exceptions" to government-required conditions on  
18 files; not allowing mortgage origination employees to manage and control  
19 underwriting; not repeatedly running the automated underwriting system to "work  
20 backwards" to find values that would allow a loan to be approved; not excluding and  
21 hiding adverse documentation; and maintaining an adequate quality control

1 program.

2 394. The government, in reliance on these false statements by AFN in its  
3 certifications to the government, extended FHA insurance coverage to the FHA  
4 home loans endorsed by AFN.

5 395. The government extended that insurance based on AFN's certification  
6 that they are in compliance with all government regulations, including not paying  
7 commissions to employees performing underwriting functions; not pressuring  
8 employees to approve ineligible loans; not allowing managers to make "exceptions"  
9 to government-required conditions on files; not allowing mortgage origination  
10 employees to manage and control underwriting; not repeatedly running the  
11 automated underwriting system to "work backwards" to find values that would allow  
12 a loan to be approved; not excluding and hiding adverse documentation; and  
13 maintaining an adequate quality control program.

14 396. Without AFN's certification, the government would not have allowed  
15 AFN to participate in the Direct Endorsement Program, as AFN knew.

16 397. As AFN also knew, the government has on numerous occasions  
17 commenced enforcement proceedings against mortgagees who fail to comply with  
18 the HUD-FHA regulations.

19 398. Without AFN's certification, the government would not have extended  
20 insurance coverage to files endorsed by AFN, and certainly not at the rates  
21 guaranteed by the government.

1        399. Without AFN's certification, the government would not have been  
2 liable for the insured losses on loans endorsed by AFN and covered by the  
3 government.

4        400. Had AFN truthfully told the government that AFN was not in  
5 compliance with HUD-FHA regulations, and specifically the requirements of not  
6 paying commissions to employees performing underwriting functions; not  
7 pressuring employees to approve ineligible loans; not allowing managers to make  
8 "exceptions" to government-required conditions on files; not allowing mortgage  
9 origination employees to manage and control underwriting; not repeatedly running  
10 the automated underwriting system to "work backwards" to find values that would  
11 allow a loan to be approved; not excluding and hiding adverse documentation; and  
12 maintaining an adequate quality control program, AFN would not have been allowed  
13 to endorse any loans for the FHA.

14        ***Loan-level certifications***

15        401. As set forth above, the purpose of the regulations, and the purpose of  
16 AFN's certifications on each endorsed FHA loan files that there was "no defect in  
17 connection with [the] approval of this mortgage," and that it had been "approved in  
18 accordance with FHA requirements," was to was to ensure that AFN was providing  
19 conforming FHA underwriting services to the government.

20        402. Similarly, the purpose of AFN's certifications on each VA loan that it  
21 endorsed that "all verifications of employment, deposit, and other income and credit

1 verification documents have been processed in compliance with 38 CFR part 36”  
2 and that the loan “meets the underwriting standards recited in chapter 37 of title 38  
3 United States Code and 38 CFR part 36” was to ensure that AFN was providing  
4 conforming VA underwriting services to the government.

5 403. A reasonable person would not have extended loan insurance, and  
6 certainly not provided it at lower rates offered in the governmental program, if she  
7 knew that there were defects in regards to the underwriting process as it relates to  
8 the approval of the mortgage, and that the approval had not been in accordance with  
9 government requirements, including defects such as improper calculations of  
10 borrowers’ income related to overtime and bonus earnings to inflate borrowers’  
11 incomes; using fraudulent rental and housing payment histories to establish borrower  
12 creditworthiness; failing to obtain the proper verifications of employment;  
13 improperly calculating the effective income of employees paid on an hourly basis  
14 based on a forty hour workweek, when in fact the borrowers were not regularly  
15 working at least forty hours in a week; failing to deduct unreimbursed business  
16 expenses from the net income calculations of self-employed borrowers; intentionally  
17 omitting student loan debts; failing to obtain written letters of explanation from  
18 borrowers with major indications of derogatory credit; and failing to obtain donor  
19 bank statements to verify gift fund assets, particularly when AFN was falsely  
20 certifying that was not occurring.

21 404. AFN knew that the government attached importance to these loan-level  
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1 certifications that there were no defects in regards to the approval of the mortgage  
2 and they had been approved in accordance with government requirements.

3 405. Among other things, the government required these certifications  
4 before extending insurance coverage to AFN's endorsed loans.

5 406. The entire purpose of compliance with the relevant government  
6 regulations was the essence of the bargain between the government and AFN: AFN  
7 would only provide underwriting services following the regulations, and only  
8 endorse loans that met the regulations' requirements, and the government would  
9 only extend insurance to AFN's loans based on AFN's accurate representation that  
10 they had followed the regulatory and contractual requirements in endorsing the  
11 loans, including not paying commissions to employees performing underwriting  
12 functions; not pressuring employees to approve ineligible loans; not allowing  
13 managers to make "exceptions" to government-required conditions on files; not  
14 allowing mortgage origination employees to manage and control underwriting; not  
15 repeatedly running the automated underwriting system to "work backwards" to find  
16 values that would allow a loan to be approved; not excluding and hiding adverse  
17 documentation; and maintaining an adequate quality control program.

18 407. Therefore the government was expressly clear that a condition of  
19 extending insurance coverage to AFN's endorsed loans and ultimate payment on any  
20 losses was that AFN's loan certifications that there were no defects in regards to the  
21 approval of the mortgage and it had been approved in accordance with government



1 requirements, including properly calculating borrowers' income; properly  
2 establishing borrower creditworthiness; obtaining the proper verifications of  
3 employment; properly deducting unreimbursed business expenses from the net  
4 income calculations of self-employed borrowers; including student loan debts in the  
5 calculation of debt obligations; obtaining the satisfactory written letters of  
6 explanation from borrowers with major indications of derogatory credit; and  
7 obtaining the proper bank statements to verify gift fund assets.

8 408. The government, in reliance on these false statements by AFN in its  
9 certifications to the government, extended FHA and VA insurance coverage to the  
10 FHA and VA home loans endorsed by AFN.

11 409. The government extended that insurance based on AFN's loan-level  
12 certification that there were no defects in the underwriting process and that the loans had  
13 been approved in accordance with government requirements, including properly  
14 calculating borrowers' income; properly establishing borrower creditworthiness;  
15 obtaining the proper verifications of employment; properly deducting unreimbursed  
16 business expenses from the net income calculations of self-employed borrowers;  
17 including student loan debts in the calculation of debt obligations; obtaining the  
18 satisfactory written letters of explanation from borrowers with major indications of  
19 derogatory credit; and obtaining the proper bank statements to verify gift fund assets.

20 410. Without AFN's loan-level certification, the government would not have  
21 extended insurance coverage to files endorsed by AFN, as AFN knew, and certainly

1 not at the rates guaranteed by the government.

2 411. Without AFN's loan-level certification, as AFN knew, the government  
3 would not have been liable for the insured losses on loans endorsed by AFN and  
4 covered by the government.

5 412. Had AFN truthfully told the government that there were defects in  
6 regards to the approval of the mortgage and it had not been approved in accordance  
7 with government requirements, and specifically including properly calculating  
8 borrowers' income; properly establishing borrower creditworthiness; obtaining the  
9 proper verifications of employment; properly deducting unreimbursed business  
10 expenses from the net income calculations of self-employed borrowers; including  
11 student loan debts in the calculation of debt obligations; obtaining the satisfactory  
12 written letters of explanation from borrowers with major indications of derogatory  
13 credit; and obtaining the proper bank statements to verify gift fund assets.

14 413. In addition, the purpose, as well as the actual outcome, of AFN's  
15 underwriting operations was to have AFN's employees endorse loans in which AFN  
16 knew the applicant fell below government's requirements for insuring the loans as  
17 described in ¶¶ 152–65 and 179–87.

18 414. AFN's illegal policies and practices therefore induced material false  
19 representations to the government as set forth in ¶¶ 132–87 and AFN is  
20 independently liable for such materially false statements knowingly induced these  
21 practices.

1 415. Additionally, the endorsement of unqualified borrowers also  
2 constituted a material false statement on the loan-level certifications.

3 416. A reasonable person would not have extended loan insurance on and  
4 endorsed loan, and certainly not provided it at lower rates offered in the  
5 governmental program, if she knew that the borrower was not qualified for the loan  
6 as wrongly certified by AFN.

7 417. AFN knew that the government attached importance to these loan-level  
8 certifications that the loan files accurately reflected that the borrower was qualified  
9 for the mortgage.

10 418. Without AFN's certification, the government would not have allowed  
11 AFN to participate in the Direct Endorsement Program, as AFN knew.

12 419. Among other things, the government required these certifications  
13 before extending insurance coverage to AFN's endorsed loans.

14 420. The entire purpose of compliance with the relevant government  
15 regulations was the essence of the bargain between the government AFN: AFN  
16 would only provide underwriting services following the regulations, and only  
17 endorse loans that met the regulations' requirements, and the government would  
18 only extend insurance to AFN's loans based on AFN's accurate representation that  
19 they had followed the regulatory and contractual requirements in endorsing the  
20 loans, including not paying commissions to employees performing underwriting  
21 functions; not pressuring employees to approve ineligible loans; not allowing

1 managers to make “exceptions” to government-required conditions on files; not  
2 allowing mortgage origination employees to manage and control underwriting; not  
3 repeatedly running the automated underwriting system to “work backwards” to find  
4 values that would allow a loan to be approved; not excluding and hiding adverse  
5 documentation; and maintaining an adequate quality control program.

6 421. Therefore the government was expressly clear that a condition of  
7 extending insurance coverage to AFN’s endorsed loans, and ultimate payment on  
8 any claims, was that AFN’s loan-level certifications were accurate, and specifically  
9 that the applicant was qualified for the loan.

10 422. The government, in reliance on these false statements by the AFN in its  
11 loan-level certifications to the government, extended government insurance  
12 coverage to the government home loans endorsed by AFN.

13 423. The government extended that insurance based on AFN’s certification  
14 that the information provided about the applicant was accurate, and that the applicant  
15 met the government’s criteria.

16 424. Without AFN’s loan-level certification, the government would not have  
17 extended insurance coverage to files endorsed by AFN, as AFN knew, and certainly  
18 not at the rates charged by the government.

19 425. Without AFN’s loan-level certification, the government would not have  
20 been liable for the insured losses on loans endorsed by AFN and covered by the  
21 government.

1        426. Had AFN truthfully told the government that the information in the file  
2 was not accurate, and that the applicant was not qualified, the government would not  
3 have insured AFN's endorsed loan files.

4        ***Claims on the government***

5        427. 655. The False Claims Act defines the term "claim" to mean, in  
6 relevant part: "any request or demand, whether under a contract or otherwise, for  
7 money or property and whether or not the United States has title to the money or  
8 property, that: (i) is presented to an officer, employee, or agent of the United States;  
9 or (ii) is made to a contractor, grantee, or other recipient, if the money or property is  
10 to be spent or used on the Government's behalf or to advance a Government program  
11 or interest, and if the United States Government (I) provides or has provided any  
12 portion of the money or property requested or demanded; or (II) will reimburse such  
13 contractor, grantee, or other recipient for any portion of the money or property which  
14 is requested or demanded." 31 U.S.C. § 3729(b)(2)(A) (2010).

15        428. The Supreme Court has made clear that a request for payment made  
16 under a federal loan guarantee that was obtained in violation of a statute, regulation,  
17 or program requirement, by the use of a false statement, or by means of other  
18 fraudulent conduct qualifies as a "claim" under the False Claims Act. *See United*  
19 *States v. Neifert-White Co.*, 390 U.S. 228, 232 (1968).

20        429. As set forth above, loans endorsed by AFN caused the government to  
21 sustain claims against it.

1        430. Had AFN truthfully certified to the government that it was not in  
2 conformance with governmental underwriting requirements, the government would  
3 not have insured these loans and would not have been liable for claims arising from  
4 these improperly approved loans.

5        431. Similarly, had AFN not knowingly and falsely certified to the  
6 government that there was no defect in connection with the improperly approved  
7 mortgage, the government would not have insured any of it loans and would not  
8 have been liable for claims arising from these improperly approved loans.

9        432. By endorsing ineligible mortgages for FHA insurance AFN  
10 fraudulently induced the United States to enter into a mortgage insurance contract  
11 that it would not have otherwise entered into, rendering the subsequent claim for  
12 mortgage insurance false as a matter of law.

13        433. Another independent way in which AFN triggered claims against the  
14 government was through the government payments of losses on any of AFN's loans.

15        434. Had AFN not knowingly and falsely certified to the government that it  
16 was in conformance with governmental underwriting requirements, the government  
17 would not have insured any of AFN's loans and thus would not have been liable for  
18 claims arising from any of AFN's loans.

19        435. Another independent way in which AFN triggered claims against the  
20 government was through the government subsidized insurance that the government  
21 provided to all of the loans endorsed by AFN, subsidized insurance which constitutes

1 a “claim” under the FCA.

2 436. Had AFN not knowingly and falsely certified to the government that it  
3 was in conformance with governmental underwriting requirements, the government  
4 would not have insured AFN’s loans and thus would have provided the government  
5 subsidized insurance to AFN’s governmental loans.

6 437. Similarly, had AFN not knowingly and falsely certified to the  
7 government that there was no defect in connection with improperly approved  
8 mortgages, the government would not have insured those loans and would not have  
9 been liable for claims arising from these improperly approved loans.

10 438. Another independent way in which AFN triggered claims against the  
11 government was through the lower premium rates charged on AFN’s loans.

12 439. The premium rates charged by the government are premised on  
13 mortgagees only endorsing loans that meet governmental requirements.

14 440. Had AFN not knowingly and falsely certified to the government that it  
15 was in conformance with governmental underwriting requirements, the government  
16 would not have insured AFN’s loans at the rates it did.

17 441. Similarly, had AFN not knowingly and falsely certified to the  
18 government that there was no defect in connection with improperly approved  
19 mortgages, the government would not have insured AFN’s loans at the rates it did.

20 442. Thus, AFN triggered a claim against the government by having its loans  
21 insured at lower premium rates than was justified.

1 443. Another independent way in which AFN triggered claims against the  
2 government was through the additional administrative costs to the government on  
3 loans that had been endorsed by AFN.

4 444. Had AFN not knowingly and falsely certified to the government that it  
5 was in conformance with governmental underwriting requirements, the government  
6 would not have borne the additional administrative costs from servicing and  
7 supporting AFN's loans.

8 **FIRST CAUSE OF ACTION**  
9 **31 U.S.C. § 3729(a)(1)(A)**  
10 **Causing False Claims**

11 445. The United States repeats and realleges the allegations above as if fully  
12 set forth herein.

13 446. The Government seeks relief against AFN under 31 U.S.C. §  
14 3729(a)(1)(A) of the False Claims Act.

15 447. As set forth above, AFN knowingly, or acting with deliberate ignorance  
16 and/or with reckless disregard for the truth, presented or caused to be presented, to  
17 an officer or employee of the Government, false and fraudulent claims for payment  
18 or approval in connection with its endorsement of government-insured mortgages.

19 448. The Government paid insurance claims, and incurred losses, related to  
20 government-insured mortgages wrongfully endorsed by AFN because of AFN's  
21 wrongful conduct.

22 449. By endorsing ineligible mortgages for FHA insurance AFN



1 fraudulently induced the United States to enter into a mortgage insurance contract  
2 that it would not have otherwise entered into, rendering the subsequent claim for  
3 mortgage insurance false as a matter of law.

4 450. By reason of the false claims of AFN, the Government has been  
5 damaged in a substantial amount to be determined at trial, and is entitled to a civil  
6 penalty as required by law for each false statement.

7 **SECOND CAUSE OF ACTION**

8 **31 U.S.C. § 3729(a)(1)(B)**

9 **Use of False Statements**

10 451. The United States repeats and realleges the allegations above as if fully  
11 set forth herein.

12 452. The Government seeks relief against AFN under 31 U.S.C. §  
13 3729(a)(1)(B) of the False Claims Act.

14 453. As set forth above, AFN knowingly, or acting with deliberate ignorance  
15 and/or with reckless disregard for the truth, made, used, or caused to be made or  
16 used, false records and/or statements material to false or fraudulent claims in  
17 connection with AFN's endorsement of government-insured mortgages.

18 454. The Government paid insurance claims, and incurred losses, related to  
19 government-insured mortgages wrongfully endorsed by AFN because of AFN's  
20 wrongful conduct.

21 455. By making false statements, AFN fraudulently induced the United  
States to enter into a mortgage insurance contract that it would not have otherwise

1 entered into, rendering the subsequent claim for mortgage insurance false as a matter  
2 of law.

3 456. By reason of the false claims of AFN, the Government has been  
4 damaged in a substantial amount to be determined at trial, and is entitled to a civil  
5 penalty as required by law for each false statement.

6 **THIRD CAUSE OF ACTION**  
7 **31 U.S.C. § 3729(a)(1)(G)**  
8 **Reverse False Claims**

9 457. United States repeats and realleges the allegations above as if fully set  
10 forth herein.

11 458. The Government seeks relief against AFN under 31 U.S.C. §  
12 3729(a)(1)(G) of the False Claims Act.

13 459. As set forth above, AFN knowingly made, used or caused to be made  
14 or used false records and/or statements to conceal, avoid, or decrease an obligation  
15 to pay or transmit money or property to the United States.

16 460. The Government paid insurance claims, and incurred losses, relating to  
17 government-insured mortgages wrongfully endorsed by AFN because of AFN's  
18 wrongful conduct.

19 461. By virtue of the false records or statements made by AFN, the  
20 Government suffered damages in a substantial amount to be determined at trial, and  
21 is entitled to a civil penalty as required by each false statement.

1           **WHEREFORE, Relator, on behalf of herself and the United States**

2 **Government, requests the following relief:**

- 3           a.     A judgment against AFN in an amount equal to three times  
4                 the amount of damages the United States has sustained as  
5                 a result of AFN's violations of the False Claims Act;
- 6           b.     A judgment against AFN for civil penalties as described  
7                 (and adjusted for inflation) under 31 U.S.C. § 3729(a)  
8                 (1)(G) for each of AFN's violations of the False Claims  
9                 Act;
- 10          c.     That Relator recover all costs of this action, with interest,  
11                 including the cost to the United States Government for its  
12                 expenses related to this action;
- 13          d.     That Relator be awarded all reasonable attorneys' fees in  
14                 bringing this action;
- 15          e.     That in the event the United States Government proceeds  
16                 with this action, Relator be awarded an amount for  
17                 bringing this action of at least 15% but not more than 25%  
18                 of the proceeds of the action;
- 19          f.     That in the event the United States Government does not  
20                 proceed with this action, Relator be awarded an amount  
21                 for bringing this action of at least 25% but not more than  
               30% of the proceeds of the action;
- g.     That a trial by jury be held on all issues so triable;
- h.     An award of pre-judgment interest; and
- i.     Such other relief to Relator and/or the United States of  
               America as this Court may deem just and proper.

**JURY TRIAL DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure or any similar rule or law, Plaintiff demands a trial by jury for all causes of action and issues for which trial by jury is available.

Dated: March 8, 2019.

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